

**BEFORE PUBLIC LAW BOARD NO. 6621**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**And**

**UNION PACIFIC RAILROAD COMPANY**

**Case No. 46**

**Statement of Claim:** Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the terms and provisions of the current Collective Bargaining Agreement Rule 1 and 45 when on January 6, 2004, it held a formal investigation in connection with claimant Mr. Francis J. Tabaha's alleged violation of Carrier Rules which occurred on October 10, 2003. That it further violated that Agreement when, subsequent thereto, it assessed a Level 2 upon Mr. Tabaha without benefit of a fair and impartial hearing.
2. In view of the Carrier's action of assessing a Level 2 upon claimant, and accomplished same without according him his contractual rights to due process, we respectfully request that the claimant's Level 2 be expunged from his personal record.

**Background:**

Claimant Francis J. Tabaha, a laborer and operator with about twenty-three years' seniority, was on a medical leave of absence when the Carrier sent him letters dated July 21, September 25 and November 3, 2003 requesting that he provide Carrier Health Services certain medical documentation related to his leave. Claimant, who did not know how to read English, failed to respond to the first two letters. When Claimant's son visited him in November 2003 and read the letters, he arranged to have the requested medical information faxed to Carrier Health Services. As a result, Claimant's medical leave of absence was extended from November 12 through January 12, 2004.

By letter dated November 20, 2003, the Carrier notified Claimant of an investigation and

hearing in connection with the charge that Claimant had failed to respond to letters from Health Services, in alleged violation of Rule 1.13, Reporting and Complying with Instructions, which provides:

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

(Car. Ex. A-2). Following the investigation and hearing, the Carrier issued Claimant a letter dated January 23, 2004, notifying him that a Corrective Action Plan, Level 2 discipline, would be developed upon his return to work because he had been found to have violated Rule 1.13, Failure to Comply with Instructions. In a February 4, 2004 letter, the Organization submitted a claim, which was denied by the Carrier. Because the parties failed to resolve the dispute on the property, they referred the matter to the Board for final and binding resolution.

**Carrier's Position:**

The Carrier contends that Claimant had no valid excuse for not responding to its three letters requesting medical documentation. In response to the Organization's argument that Claimant did not understand English, the Carrier asserts that Claimant had little difficulty understanding his Organization representative as he spoke English at the hearing. Moreover, the Carrier cites Claimant's failure to take advantage of the Carrier's English education programs. In any event, the Carrier submits that, if Claimant did not understand the letters that were sent to him, he had the responsibility to find out what they said.

With respect to the discipline assessed, the Carrier claims that requiring a corrective action plan to be developed upon his return to work, Level 2 discipline, was the appropriate corrective measure, and was not arbitrary, capricious or an abuse of Carrier discretion.

**Organization's Position:**

The Organization submits that, because Claimant could not read English, he should not have been disciplined for not responding more promptly to the Carrier's letters. In support, the Organization cites the fact that Claimant's wife, who had passed away the previous year, had handled the mail for him, and his son, who could read, lived far away. In addition, the Organization argues that because the Carrier had received the requested medical information by the time that it issued the discipline, the matter had been rendered moot.

**Findings:**

It is not disputed that Claimant received the letters requesting medical documentation relating to his medical answer. Likewise, it is undisputed that Claimant did not provide the requested documentation for more than three months after receipt of the July 21, 2003<sup>1</sup> letter, and more than a month after the September 25 letter.

The Organization contends that the Carrier failed to sustain its burden of proof because Claimant could not read English, and his wife, who had handled mail for him, had died the previous year. Claimant, however, had an obligation to find someone to read his mail for him. The Carrier has a reasonable expectation that all of its employees will be able to comprehend its written communications within a reasonable period of time. By proving that Claimant failed to respond to its July 21 letter for more than three months, and its September 25 letter for more than a month, the Carrier has presented substantial evidence to support its claim.

Similarly, the Organization's contention that the issue had become moot must be rejected.

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<sup>1</sup> Unless otherwise stated, all dates will be in 2003.

The Carrier has the right to have the issue decided by the Board, even though it eventually received the requested medical documentation, because the issue is one that could well recur in the future.

Enforcement of Rule 1.13, which requires an employee to comply with supervisors' instructions, is fundamental to the employee's relationship with the Carrier. The discipline issued by the Carrier, a requirement that a Corrective Action Plan be developed upon Claimant's return to work, was a reasonable measure to ensure that violations of this sort would not recur. For that reason, the discipline was not arbitrary, capricious or an abuse of the Carrier's discretion.

Award:

The claim is denied.

W.G.R.  
CARRIER MEMBER  
DATED: 10-18-04

Joan Parker  
JOAN PARKER, Neutral Member

[Signature]  
ORGANIZATION MEMBER  
DATED: 10-18-04