

BEFORE PUBLIC LAW BOARD NO. 6942

UNITED TRANSPORTATION UNION

vs.

Case 31

UNION PACIFIC RAILROAD

PETITIONER'S STATEMENT OF THE CLAIM

Appeal filed on behalf of employees K.A. Olsen, EID 0411813 and K.S. Raether, EID 0413443, as a result of the formal investigation held on July 14, 2005, at Seattle, Washington resulting in Level 3 discipline administered (5 days suspensions).

POSITIONS

ORGANIZATION

The Carrier violated the procedural provisions of the applicable agreement in four ways. First, it did so by not giving the two employees written notice of the specific charges. Both Claimants testified that they receive the notices of disciplinary hearing, but only received the notices of postponement. Second, the notices of investigation were sent to the wrong representative. Third, the notices failed to properly identify the time of the alleged violation. While such an error may have been "typographical," the Carrier's disregard for factual accuracy equaled a disregard for the Claimant's guilt or innocence in this matter. Fourth, the Carrier failed to provide the Claimants' representatives with copies of the waivers of hearing. The Carrier also failed to prove its allegations against the Claimants and that the resulting discipline was therefore arbitrary and unwarranted.

CARRIER

The Organization's procedural objections do not have any merit. The Hearing Officer considered all objections and none were considered sufficient to warrant canceling the hearing. The objections were also considered and rejected on appeal. The Carrier afforded the Claimants a full and fair hearing. The Carrier's position as to the merits is supported by substantial evidence and, therefore, must be sustained by this Board.

DISCUSSION

Failure to Provide Representative with Waiver of Hearing Document as Requested

The Organization contends that the Carrier failed to provide Claimants' Representatives with copies of the waivers of hearing, form EC&L #2, as requested by the Organization in writing (hearing ex 7, item 2) on July 8, 2005. The Carrier revoked the Claimant's remote licenses on June 14, 2005, on the mistaken basis that they had both proceeded through a signal without proper authorization and conducted a backing movement without proper authorization. Only the former required revocation. There is an allegation that they may have been denied representation by the Organization. Claimant Olson testified that he signed the form on June 14 "under pressure." There is an allegation that K. S. Raether also signed a similar notice, but she did not testify on the point. The revocation was later rescinded on about June 28, 2005, after the Carrier was informed of its error. The Carrier never provided copies of the waivers to the Organization. The Organization raised this objection at the July 14, 2005, hearing. The hearing officer over-ruled this objection and the Carrier denied the objection on appeal.

The applicable Memorandum of Understanding provides in relevant part at Section V, Paragraph D: "When request is made sufficiently in advance the employee and/or the UTU local chairperson or the UTU local chairperson's designee will be allowed to examine material or exhibits to be presented in evidence prior to the investigation. At the investigation, the . . . UTU . . . will be afforded the opportunity to examine witnesses or cross-examine witnesses. Such examination will extend to all matters under investigation. . . . " The Organization is entitled to have the Carrier produce documents which the Organization intends to use in cross-examination of witnesses.

The Organization attempted to attack the credibility of the Carrier witness as to his motivation in imposing discipline in this case. The fact that employees were coerced into signing a waiver is evidence that the Carrier suspected their innocence. The fact that both signed waivers on the same date and same time, if shown by documents, strongly supports the argument of both that they were coerced.

Taken with other evidence overall the Organization had the opportunity to show that the reason that the Carrier was motivated in obtaining the highest level of discipline it could impose was to minimize the embarrassment it faced for the error. There was testimony by the employees implying they inadvertently allowed a very sort reversing movement. The Organization was entitled to cross examine to the effect that the Carrier's motivation led it fail to investigate if there were any inadvertent movement.

The Carrier's actions in ignoring the Organization's request for documents useful in cross examination violated the agreement. The discipline imposed must be set aside.

AWARD

That since the Carrier violated Section V, Paragraph D of the Memorandum of Understanding in ignoring the Organization's request for documents useful in the cross-examination of witnesses, the discipline of both Claimants is set aside. They shall be made whole for all lost wages and benefits. This award shall become effective fifteen

(15) days from the date hereof unless either party requests further proceedings in writing, with a copy to opposing party.

Dated this 19th day of June, 2006,

I dissent:

Richard Henderson
Carrier Member

Robert Draskovich
Organization Member

Stanley H. Michelstetter II
Stanley H. Michelstetter II,
Referee

I concur:

Richard Henderson
~~Richard~~ Henderson
Carrier Member

Robert Draskovich
~~Robert~~ Draskovich
Organization Member