

PARTIES **UNION PACIFIC RAILROAD**

TO **AND**

DISPUTE **UNITED TRANSPORTATION UNION**

**Claim of Switchman M. C. Bohanon for
removal of five day suspension
(UPGRADE LEVEL 3) assessed to his
personal record with pay for all time lost.**

Based upon the record in its entirety and after the conclusion of the hearing, the Board finds the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and this Board has jurisdiction over the dispute involved herein.

Claimant, who began his railroad career in 1969, was working as Switchman on yard assignment YRV27-14 at Roseville, California. On March 14, 2006, at approximately 4:50 P.M., Manager of Yard Operation (MYO) W. J. Sweatt observed claimant step between moving cars to adjust and make a knuckle coupling, in violation of Safety Rule 81.13.1 and 81.13.3. Sweatt originally wrote an FTX ticket but later discovered claimant was not eligible for one.

A Notice of Investigation on March 21, 2006, scheduled the investigation for March 31, 2006. After two postponements, one by the Carrier and the other by the claimant, the investigation was rescheduled for April 25, 2006, and held on that date. Claimant failed to appear but was represented by UTU Local Chairman D. W. Patenaude, who said he did

not know if claimant received notice of the new date of the meeting. The Carrier proceeded with the investigation, asserting that such ex parte hearing in and of itself does not abridge claimant's right to a fair and impartial hearing.

The Carrier provided documentation from the U.S. Postal Service showing that claimant received the notice dated April 21st on April 25th at 4:39 P.M. Patenaude stated he had spoken with claimant who told him: "that he had separated the cars the required distance and twice attempted to make the coupling, that he possibly entered the red zone and that he momentarily leaned in to view the coupling to see if they were going to line up." Claimant was not charged with entering the red zone. Patenaude said claimant did not tell him how far away the cars were and without him being present to testify, he would not have that information and without the presence of the claimant, it was hard to establish all of the facts. Claimant was present for the original hearing that was scheduled for March 31, 2006. However, the hearing was rescheduled and took place on April 25, 2006. Patenaude assumed claimant did not receive notice of the last schedule change or that his health prevented him from being present at the instant hearing.

SUMMARY AND CONCLUSION

The fact that claimant violated Rules 81.13.1 and 81.13.3 is uncontested in light of his admission to MYO Sweatt that he has always performed coupling by stepping between cars when they were moving to adjust the coupler, and has done so for over 30 years. Therefore, the issue becomes whether or not there was proper and timely notice to claimant about the time and place of the rescheduled meeting.

The Carrier entered into the record identification numbers on certified return requested receipts showing the meeting notice had in fact been mailed. However, there was no record of a signed receipt indicating claimant had in fact received and signed for the notice. Patenaude questioned Sweatt whether he had any proof that claimant had received the notice. Sweatt testified that he had no such proof.

For certainty of receipt, proof of delivery is insufficient and has to be complemented by proof of receipt. The fact that claimant showed up at the original scheduled meeting is an indication of his intent to be present.

Article 30, Section(d) is worth reviewing:

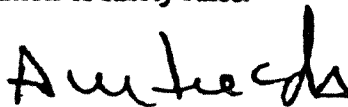
"When formal investigation is to be held the employee shall be given written notice as to the specific charge, time and place, sufficiently in advance to afford him the opportunity to arrange representation and for the attendance of any desired witnesses. A telegram will be considered written notice. The Company will require the presence of all employees whose testimony may be necessary to develop all of the essential facts."

Implicit in giving written notice is the assumption the employee in fact received such notice and a signed receipt is the requisite proof.

There is no such evidence that Carrier complied with this provision, thus denying claimant due process, and when there is such failure any discipline is subject to being rescinded.

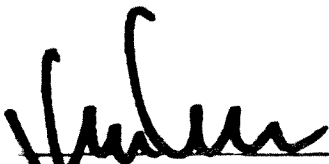
AWARD

The claim is sustained. The claimant is hereby reinstated to service with seniority rights unimpaired, and shall be compensated for all lost time. The claimant shall be issued a one-day training without pay and a Corrective action plan is to be developed for him upon his return to work for violation of safety rules.



Alonzo M. Fields, Jr.

Chairman, Neutral Member



Union Member

Date: May 29, 2007


Dissent

Carrier Member