

## PUBLIC LAW BOARD NO. 7062

**PARTIES TO  
THE DISPUTE:**

Award No. 1/Case No. 1

Brotherhood of Maintenance of Way  
Employees Division of the International  
Brotherhood of Teamsters  
vs.

Union Pacific Railroad Company

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**STATEMENT OF CLAIM:** “Claim of the System Committee of the Brotherhood that:

- 1) The Carrier’s [sic] violated the agreement when “on January 6, 2006 it held a formal investigation in connection with Claimant Norman T. Calloway’s alleged violation of not providing specific medical updates. That it further violated the agreement when, subsequent thereto, it assessed a Level 2 upon Mr. Calloway without benefit of impartial and unbiased consideration being given to the testimonies of the transcript record (Carrier File 1444760).
- 2) As a consequence of the violations identified in Part 1, the Organization has requested “that the Claimant’s Level 2 be expunged from his personal record.”

**FACTS AND FINDINGS OF THE BOARD:**

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the parties, claim and subject matter herein, and that the parties were given due notice of the hearing which was held on March 12, 2008 in San Antonio, Texas.

Claimant, a welder helper, established seniority with the Union Pacific Railroad Company (“Carrier”) on July 1, 1986. He holds and maintains seniority within the Track Sub-department, serving on Gang 8571. Between October 2004 and December 2005, Carrier requested by correspondence on five separate occasions that Claimant update his medical records with the Carrier and/or to provide certain documentation via his medical provider. The requested information was to assess Claimant’s then current medical status and his ability to safely wear respirators that are required for certain duties of his craft. There is no credible evidence that Claimant did not receive each written request. Each request asked for Claimant to either complete enclosed documentation, provide requested information and/or to ensure his physician provided certain information. The record

evidence reveals that Claimant either never responded to the requests or only partially did so. In any event, he never fully complied with any request nor have his responses in total fully responded or complied with any of Carrier's requests.

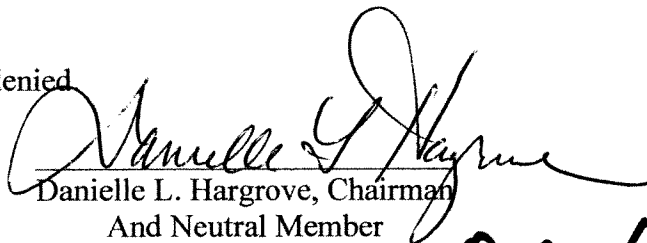
The Organization's primary defense in this matter is that Claimant effectively complied with Carrier's request because he responded to Carrier's last correspondence by sending it in on December 23, 2005 before it was due on December 27, 2005. It also argues that Claimant substantially complied with Carrier's instructions and that Carrier's needs were served when Claimant answered the questions pertaining to respiratory fitness on a Respiratory Health Questionnaire, despite the fact that Claimant did not respond to the questions pertaining to hearing.

Carrier contends that Claimant has yet to properly comply with the instructions from the Health Department. Therefore, it properly found liability and assessed Level 2 discipline for Claimant's failure to follow instructions in violation of Carriers operating Rule 1.13 (Reporting and Complying with Instructions).<sup>1</sup>

After a complete review of the evidence on the record and on the property, we are wholly persuaded that Carrier has met its burden in demonstrating that Claimant violated Rule 1.13. Claimant did not fully or completely comply with Carrier's instructions despite five opportunities to do so. We further find that the assessed discipline was neither arbitrary nor capricious. We cannot find any basis upon which to overturn Carrier's findings or the assessed discipline.

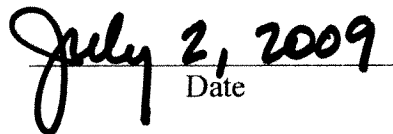
We find no merit to the procedural issue raised on the record concerning the timeliness of the charges allegedly in violation of the bargaining agreement between the parties.

**AWARD:** The claim is denied

  
Danielle L. Hargrove, Chairman  
And Neutral Member

  
Timothy W. Kreke  
Employee Member

  
Dominic Ring  
Carrier Member

  
Date

<sup>1</sup> Rule 1.13 states: 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.