

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7258

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)	
)	Case No. 3
and)	
)	Award No. 3
UNION PACIFIC RAILROAD COMPANY)	
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Richard K. Hanft, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: November 12, 2008

STATEMENT OF THE CLAIM:

1. The five (5) day suspension imposed upon Machine Operator Rigoverta Munoz for violation of GCOR Rule 70.3 (Job Briefing) in connection with failing to have a complete job briefing on May 11, 2007 is unjust, unwarranted, based on unproven charges and in violation of the Agreement. (Carrier's File 1483675SPW).
2. As a consequence of Part 1 above, the Organization requests that Mr. Munoz's record be expunged of any and all reference to the Level 3 and that his personal record reflect that he has been exonerated of all charges. The Organization further requests that Mr. Munoz be reimbursed for all loss of wages, straight time and overtime, for the period of time that he has been instructed to observe five (5) days off.

FINDINGS:

Public Law Board No. 7258 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On May 16, 2007 Claimant was notified to report for an investigation and hearing concerning allegations that he failed to have a complete job briefing in violation of General Code of Operating Rule No. 70.3 . Following a mutually agreed postponement, an investigation was conducted on June 5. On June 27 a Level 3, five-day suspension was imposed on Claimant. The Organization presented a Claim on Claimant's behalf on August 21 that was denied on October 12, 2007.

Carrier contends that it presented substantial evidence in support of its finding that Claimant violated Rule 70.3 during the investigation on the property and there were no procedural errors during the handling of the claim on the property. Moreover, Carrier asserts, the seriousness of Claimant's offenses fully supports the level of discipline imposed. Hence, the Carrier contends that the instant claim should be dismissed in its entirety.

The Organization contends first that the Carrier's sole witness, who was not present when the job briefing took place, can only speculate as to how complete the job briefing was and that it is a well-established principle that the Carrier may not rely on mere speculation, assumption or conjecture as a basis upon which to impose discipline. Moreover, the Organization argues, the Organization presented two witnesses with direct knowledge of the job briefing who corroborated the Claimant's testimony that a complete job briefing was held. Thus, the Organization reasons, the imposition of any discipline whatsoever in this matter is improper because the evidence presented during the investigation does not support the charges leveled against the Claimant.

The record reflects that on May 11, 2007 Claimant was part of a crew that was in the process of moving a Tamper Machine and a Ballast Regulator from Marne to the City of Industry Yard to work on a recent derailment. Claimant was unfamiliar with the territory. The Organization contends that the record supports the fact and it was not disputed that the crew conducted the move with proper 'track and time' authorization from milepost 506 to milepost 504.

Directly after the move to milepost 504, the record reflects, Claimant and another machine operator were called by the crew's foreman to the surfacing crew's truck where the foreman was sitting to receive further instruction. Record testimony indicates that a conversation was had between the dispatcher and the foreman via a cell phone with the speaker activated. The Claimant related that the dispatcher told the foreman that they needed no authority from him to make their next move into the yard and that they should contact the yard master.

The record evidence reflects that the foreman did contact the Crest Conductor who informed him that he would run the machines in through track 13 or 14 and that he, the Crest Conductor, would direct the crew through the yard as they were unfamiliar with that yard's layout.

The Claimant's testimony as well as that of the corroborating witnesses indicates that the communication between the foreman and the dispatcher and between the foreman and the Crest Conductor took place in the truck with all three crewmen present over a cell phone with the speaker activated.

Claimant relates that upon completion of the job briefing, the crew returned to their equipment and began making their advancement toward the City of Industry Yard.

The crew's foreman testified that he did have a job briefing with Claimant on the day in question and just before their planned move to the yard. During that briefing, the foreman related, hazards were considered, specific responsibilities were assigned and those assignment were

explained. The foreman went on to explain that during a job briefing, he tries to cover everything: the moves to be made, who to talk to and who has been talked to and as far as he was concerned, the crew had a complete and proper job briefing.

The Charging Officer in this matter, who was also the Carrier's sole witness, testified that on the day of the incident that he had not asked Claimant if the crew had a job briefing nor did he look at the Claimant's job briefing book to verify whether or not a briefing had taken place.

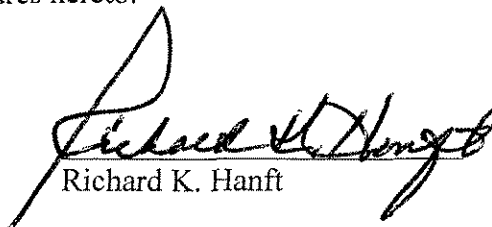
We find that the Carrier failed to carry its burden of proving the guilt of the Claimant by substantial evidence. It is clear from the testimony of the Claimant and two corroborating witnesses that after making the move to milepost 504, Claimant and the other machine operator were summoned to the crew foreman's truck where a thorough job briefing took place with the full crew hearing the conversation with the dispatcher, as well as a second conversation with the Crest Conductor. It is undisputed that the crew foreman conducted a pre-task assignment of activities to take place and that there was a confirmation of understanding by all participants in full compliance with Rule 70.3.

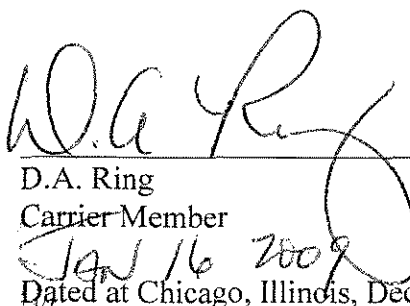
AWARD

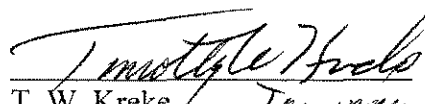
Claim Sustained in accordance with the findings.

ORDER

The Board, having determined that an award favorable to the Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto.


Richard K. Hanft


D.A. Ring
Carrier Member
Jan 16 2009
Dated at Chicago, Illinois, December 10, 2008


T. W. Kreke
Employee Member
January 16, 2009