

PUBLIC LAW BOARD NO. 7633

Case No.: 01/Award No. 01
System File No.: CEI000312A/1567291
Claimant: Warren D. Tillmon

UNION PACIFIC RAILWAY COMPANY)
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION)

Statement of Claim:

1. The discipline (dismissal) imposed on Mr. W. Tillmon by letter dated March 28, 2012 for alleged violation of Rule 74.2.1 DOT – Qualified Drivers, as contained in the Safety Rules, in connection with allegations that the claimant failed to properly complete Union Pacific’s Driver’s Daily Log (Form 24200) was without just and sufficient cause, unwarranted and in violation of the Agreement (System File CE1000312A/1567291).
2. As a consequence of the violation referred to in Part 1 above, Mr. Tillmon must now be afforded a remedy as prescribed by Rule 22(f).

Facts:

By letter dated March 13, 2012, the Claimant was directed to attend an investigation and hearing on March 22, 2012: “to develop the facts and place responsibility, if any, that while employed as Track Foreman on Gang 1101, at Momence, Illinois, near Milepost 60.10 at approximately 1515 hours, on March 8, 2012, you allegedly failed to properly complete Union Pacific’s Driver’s Daily Log (Form 24200) as required by the DOT.”

The letter further noted that the failure, if substantiated would constitute a violation of Rule 74.2.1 DOT-Qualified Drivers, as contained in the General Code of Operating Rules and that, because it would be the second Level 4 violation within 24 months, the Claimant could be assessed Level 5 discipline that might result in his removal. By mutual agreement the hearing was postponed until March 23, 2012.

Carrier Position:

The Claimant received a fair and impartial hearing. At the outset of the investigation there was no Organization objection to DRO Foresman's absence from the hearing or a request for his presence. All due process rights were observed. The Carrier proved by substantial evidence that the Claimant violated Rule 74.2.1 DOT – Qualified Drivers. The Claimant had been coached and counseled on how to maintain log books and could have used an outdated book if he did not have the new log books. Particularly in view of DOT requirements, the Claimant's proven failure to properly fill out the log book was a serious violation, justifying Level 4 UPGRADE discipline. Because he had received Level 4 UPGRADE discipline within the prior 18 months, the Level 5 dismissal was justified.

Organization Position:

The Claimant's due process rights were violated and he did not receive a fair and impartial hearing because the DRO Foreman was not present to testify. The new, updated log books were not available. There is no proof that Mr. Smith actually performed the audit of the log book. The Claimant, unrepresented during the audit, was not given a chance to correct the log book during the audit. The Carrier has not met its burden of proof; therefore discipline was without just and sufficient cause.

Findings:

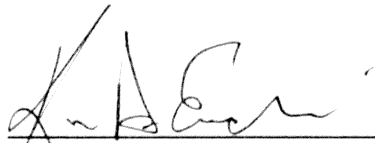
The Board finds that the Claimant received a fair and impartial hearing during which, in essence, he acknowledged his violation of Rule 74.2.1. When asked by Hearing Officer Manager Ridder, "Do you take any exception to the testimony you've heard?", the Claimant responded in part "I guess I could've been better at trying to get the rule book backdated. . ." (TR-31/32). Thereafter, the Claimant again acknowledged that "I should've backdated it and I –I should've had it filled out for the time, but I really don't think the punishment fits the crime" (TR-33). The Board finds substantial evidence that the Claimant violated Rule 74.2.1, for which Level 4 UPGRADE discipline was appropriate. However, the Board also believes, considering the facts of this particular case, that discipline has served a corrective purpose and that a lengthy suspension rather than dismissal is the proper disciplinary response.

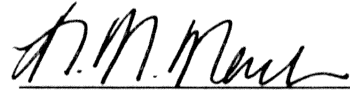
Award:

Claim sustained in part and denied in part.

Order:

The Board, after consideration of the dispute identified above, hereby orders that the Claimant be returned to work without back pay but with his seniority intact. The Carrier is to make the award effective on or before thirty (30) days after the award is adopted.



Kevin D. Evanski, Organization Member

Katherine N. Novak, Carrier Member

I. B. Helburn, Neutral Referee

Austin, Texas
February 28, 2014