

PUBLIC LAW BOARD NO. 7660
CASE NO. 3

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES

PARTIES
TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Level 2 Coaching Session imposed on Mr. M. Weir in connection with a traffic ticket while operating a boom truck for System Gang 9048 was unjust and in violation of the Agreement (System File B-1248U-105/1579077 UPS).
2. As a consequence of the violation referred to in Part 1 above, the Carrier must remove the Level 2 Coaching Session from Claimant Weir’s record and compensate him for any losses associated with the Carrier’s violation.”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

On June 20, 2012 Claimant was working as a System Thermite Welder on Gang 9048, and was asked by his supervisor to operate the boom truck for the gang during the morning briefing. The Organization presented a written statement from a Foreman present during that briefing supporting its assertion that Claimant objected, voicing

discomfort with the equipment and knowledge of the rules. Carrier submitted two separate statements from the Manager indicating that it was a Foreman who asked Claimant to operate the truck, and that, in any event, Claimant agreed and was not coerced into doing so. He has the appropriate license and has operated the boom truck in the past, albeit not on city streets as he did in this instance. While Claimant was driving, he was ticketed for being overweight and the boom truck was impounded. It appears that Claimant would not have been overweight if he had known to use the tag axle on the truck.

Claimant was given a Formal Conference regarding the importance of understanding the regulations after he signed a waiver accepting this in lieu of discipline. Carrier's Discipline Policy Guidelines state that no discipline level is established when Formal Conferencing is utilized, but a memo is placed in Claimant's file relating to the conference. The Organization requested an unjust treatment hearing under Rule 48(n), which was held on October 17, 2012, after which Carrier decided to leave the Formal Conferencing documentation in place. The instant claim was filed protesting this action.

The Organization argues that it was unjust treatment for Carrier to coerce Claimant to perform duties he was not assigned to or comfortable with, and then discipline him when something happens concerning such assignment, as it did in this case. It asserts that the Formal Conference is discipline, as it is placed in Claimant's formal record and can be relied upon to advance discipline in the future, citing Third Division Awards 26382, 32313; Public Law Board No. 6149, Award 6, and maintains that Carrier failed to follow the notice and investigation requirements of Rule 48 prior to the issuance of discipline, undermining its validity.

Carrier initially contends that Claimant was not coerced by his Manager or Foreman to operate the boom truck and that, at best, the record presents an irreconcilable

dispute in facts negating the Organization's ability to meet its burden of proof in this case, relying on Third Division Awards 26478, 37204, 33895, 36977. Carrier next argues that coaching and counseling is not discipline, and that its Guidelines specifically state that a Formal Conference does not initiate a discipline level under the UPGRADE policy. It maintains that there is no evidence to support the conclusion that Claimant was coerced to either drive the boom truck or sign the waiver opting for a Formal Conference in lieu of discipline, or that he was unjustly treated.

A careful review of the record convinces the Board that the Organization has failed to meet its burden of proving a violation of the Agreement in this case. Firstly, the precedent makes clear that the type of counseling involved in this case is not considered to be disciplinary action under Carrier's UPGRADE policy, and that documentation of Claimant's Formal Conference does not convert this into discipline under the Agreement. See, e.g. Public Law Board No. 6302, Award 199. Secondly, the basis for the Organization's unjust treatment argument is that Claimant was coerced into operating the boom truck after he expressed discomfort in doing so or knowing the applicable regulations, and then was disciplined (or counseled) for receipt of a citation concerning those same regulations. We agree with the Carrier that, with respect to this argument, the record presents an irreconcilable dispute of fact concerning whether Claimant was coerced into driving the boom truck or not. Under such circumstances, it is impossible for the Organization to sustain its burden of establishing unjust treatment in this case, requiring the dismissal of the claim. See, Third Division Awards 37204, 36977.

AWARD:

The claim is dismissed.

Margo R. Newman

Margo R. Newman
Neutral Chairperson

K. N. Novak

K. N. Novak
Carrier Member

Andrew Mulford

Andrew Mulford
Employee Member

Dated: 5/30/14

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