

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. The thirty (30) day actual suspension assessed Track Laborer A. R. Rodriguez for alleged violation of various company rules as indicated in Mr. T. J. Worthington's letter of August 1, 1991, is arbitrary, capricious and totally unwarranted.
2. Further, even though no additional charges were sustained other than those preferred, the Carrier exceeded the discipline proposed, making the discipline assessed excessive and a punishment for rejecting the Carrier's initial proposal.
3. In light of (1) and (2) above, the claimant's record shall be cleared of the discipline assessed and he shall be compensated for all time lost.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation in Salt Lake City, Utah on July 9, 1991 at 9:00 a.m. for a formal hearing on charges that while working as system track laborer on Gang 9012 on the Pocatello Subdivision, he allegedly absented himself from his duties at approximately 9:00 a.m. on June 24, 1991 indicating a possible violation of General Rules 604 of Form 7908, Safety, Radio and General Rules for All Employees.

The investigation was postponed until July 17, 1991. Pursuant to the investigation the claimant was assessed thirty days actual suspension.

Track Supervisor S. B. Ehlers of Gang 9012, who was the Charging Officer herein, testified that he learned the claimant was absent from work on June 24, and he then checked the claimant's personal record and determined he had received a letter assessing a 15 day deferred suspension in the previous year from Carlos Torres.

Supervisor Ehlers then testified he instructed his timekeeper, office car personnel, to prepare a letter of 15 days deferred suspension in which he would offer the claimant the opportunity to either accept or reject this discipline.

Supervisor Ehlers testified that the following morning L. Lay, Assistant Foreman of Gang 9012, presented the claimant with this letter which he took and signed and then returned to Mr. Lay.

Mr. Ehlers stated the discipline offer was rejected, and at that time he came over and asked the claimant if he chose to reject the discipline as proposed, and the claimant stated that he did but did not understand it and could not read English.

Supervisor Ehlers then testified that he asked the claimant if he wanted him to explain the letter to him, and the claimant replied that he did not, he had already signed it and rejected the letter. He testified the claimant said he had already signed the letter and did not want it explained to him, He testified the claimant rejected this letter before 9:00 a.m. on June 25.

Supervisor Ehlers testified that the rules require that if an employee is going to be absent he must contact the supervisor prior to the beginning of the shift by means of a paging number which is supplied and listed in each outfit car throughout the gang. He also testified the employee must receive authority prior to being absent.

Mr. Ehlers further testified that the claimant admitted to Mr. Lay that he had not tried to contact anybody. Mr. Ehlers testified the claimant had been given a similar letter in the previous year, but over six months had elapsed.

Assistant Foreman of Gang 9012 L. Lay testified that he explained the process to follow if an employee was not going to be present, and every member of the gang had been so advised. He also testified Mr. Ehlers had explained the process when the claimant was present.

Foreman Lay testified that the claimant signed the letter rejecting the discipline, and further, the claimant did not state he did not understand English that well or couldn't read. Mr. Lay testified he had never had any problems communicating with the claimant. Mr. Lay testified the claimant would be allowed to work the 15 days under a deferred suspension unless he had another violation within a six month period of time.

The claimant testified he was absent on June 24, 1991 from his assigned duties. The claimant also testified he did sign the letter rejecting the discipline offered. The claimant testified he rejected the discipline because he did not understand it, and then he went to the section and somebody explained what was meant by deferred.

The claimant further testified that on the date of the investigation before the hearing commenced, he offered to accept the 15 days deferred suspension.

The claimant testified he did not know how to use the card to notify the Carrier he was going to be absent. He testified he did have the laminated card in his wallet which advised him how to make the call. The claimant testified it was difficult for him to go through all of the numbers to get the authority to be absent. The claimant also testified he was never told what he needed to do if he had to be absent.

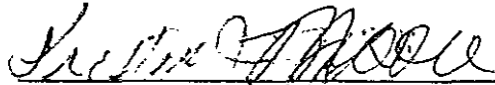
The Board has examined all of the testimony and the evidence of record. The claimant's inability to read and understand English well is certainly recognized and understood. However, the problem which arises is the fact that the claimant was offered a second opportunity and was asked if he desired to have the letter explained to him so he would know what he was refusing or accepting.

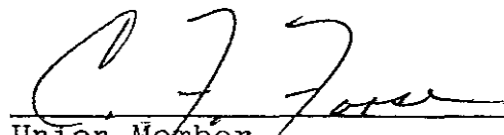
The claimant had the opportunity also to go to his Union and ask for advice but chose to wait and stand on his rejection. If the claimant, as he says, did not understand how to use the instructions for calling in when he was going to be absent, he certainly should have known he should have someone explain the process to him.

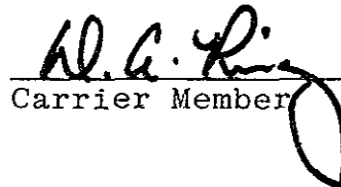
The Board recognizes that it might be difficult for the claimant to understand the instructions. Employees who do not understand nor speak English well should request explanations of any instructions given to them.

If the claimant had not been offered an opportunity to change his mind and have the offer of 15 days deferred suspension explained to him, the discipline would be set aside. However, under the circumstances herein, there is no justification to set the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman


Union Member


Carrier Member