

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)

) Case No. 11

)

) Award No. 4

)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

D. A. Ring, Carrier Member

Hearing Date: May 12, 2000

STATEMENT OF CLAIM:

1. The discipline [five (5) day suspension and a Level 3 assessment] imposed upon Track Inspector R. L. Roybal for allegedly violating Chief Engineers Bulletins 123.5.1 and 123.5.2, in connection with alleged failure to initiate proper remedial action for deviation in track on November 6, 1996 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File D-284/1068457D).
2. As a consequence of the violation referred to in Part (1) above, the Carrier shall rescind all of the charges against Mr. Roybal and he shall be compensated for all time lost.

FINDINGS:

Public Law Board No. 6302, upon the whole record and all 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 November 13, 1996, Carrier instructed Claimant to attend an investigation on November 21, 1996, concerning charges that while working as a Track Inspector on November 6, 1996, he failed to initiate proper remedial action for track deviations, resulting in a Code 1 violation. The hearing was held as scheduled. On December 10, 1996, Carrier advised Claimant that he had been found guilty of the charge and had been assessed discipline at Level 3 of Carrier's UPGRADE, a five day suspension.

The Organization advanced a number of procedural objections to the discipline. Because of the result we reach on the merits, we find it unnecessary to reach the procedural issues.

The evidence was undisputed that Claimant was inspecting track on November 6, 1996, when, at Mile Post 641.10, he found that two bolts were missing. It also is undisputed that Carrier's rules and Federal Railroad Administration regulations required Claimant to take remedial action of either taking the track out of service, repairing the track, or allowing the track to continue to be used for a period of up to 30 days subject to a slow order of 10 mph. Claimant obtained a permit for the track, placed a slow order of 25 mph and then proceeded to repair the track. No trains passed over the track between the time Claimant discovered the defect and the time it was repaired.

Carrier maintains that Claimant admitted that he placed a 25 mph slow order when, in the past, he had placed 10 mph slow orders for similar defects. Carrier also points to Claimant's testimony that he believed that a 25 mph slow order was appropriate because he thought that another track inspector and an FRA inspector had passed over the defect before he discovered it. Carrier argues that Claimant's belief based on the actions of others would not justify deviating from the proper speed for the slow order.

Carrier's observations are accurate but besides the point. As noted above, placing a slow order was only one option available to Claimant to comply with the rules. After describing the rules allowing operation of the defective track with a slow order of 10 mph, the manager track maintenance testified:

Q: [I]n this case that we've got for the - - as far as the 641.10. The defect we're looking at, was there - - is there any other type of remedial action that can be put on a defect like this or not?

A: Yes. There's three things you do when you find a defect in the track, either you take the track out of service, bring it into compliance, or slow order it. It gave three options.

Subsequently, on cross-examination, the manager track maintenance indicated that a slow order was not necessary under circumstances presented in the instant case. He testified:

If I can bring the track into compliance by putting a bolt in it, when I'm right there, yes. I'll repair the track and there won't be no slow order.

On redirect, the manager track maintenance further testified:

Q: As far as when you talk about compliance, Mr. Tanner asked you about bringing track into compliance, in this particular instance, or not - - let's just refer in general like Mr. Tanner, have you ever - - when you're running over it, and say

you find a joint like that, would you ever have a track - - if you had a track and time would that be compliance on that track?

A: Yes.

Q: So, that would be compliance, it's out of service, is that correct?

A: Yes.

Thus, it appears from the manager track maintenance's testimony, that, despite placing an incorrect slow order, Claimant complied with the rules by obtaining track and time and correcting the defects promptly. Under these circumstances, we must sustain the claim.

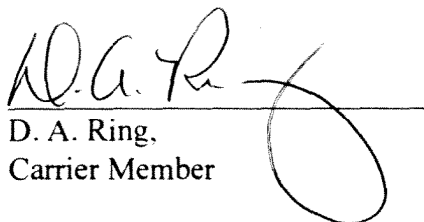
AWARD

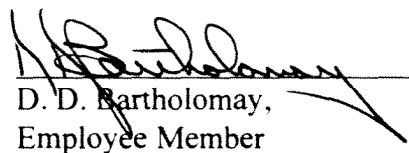
Claim sustained.

ORDER

The Board, having determined that an award favorable to 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.



Martin H. Malin, Chairman

D. A. Ring,
Carrier Member

D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, June 19, 2000.