

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 6302**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

and

**UNION PACIFIC RAILROAD COMPANY**

)  
) Case No. 15  
)  
) Award No. 6  
)

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 Machine Operator D. L. Bowen for his alleged violation of Union Pacific Rules 42.1, 42.1.4, 42.8, 41.2 and 42.2.2, in connection with an accident that occurred on December 18, 1996, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File D-288/1092144D).
2. As a consequence of the violation referred to in Part (1) above, '... the discipline issued by Manager Track Maintenance D. J. Kula's letters dated January 17 and 30, 1997, that all mention related to the December 18, 1996, incident be expunged from Claimant Bowen's personal record, and that he be paid wages lost for the five (5) day suspension from service from February 3, 1997 through and including February 7, 1997. All benefits and entitlement are claimed as if he had worked.'

**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 December 18, 1996, Claimant was involved in a collision between the machine that he was operating and another machine. On December 20, 1996, Claimant met with the manager

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track maintenance (MTM). At that time, the MTM gave Claimant a Form 2, Waiver/Hearing Offer. The form is divided into five sections. Section One, as completed by the MTM, states:

Based on the facts brought forth in our discussion on 12-20-96  
you are allegedly in violation of Rule(s) 42.1 42.1.4 42.8 41.2 42.2.2  
found in the following Union Pacific Railroad Publications:

*Check the appropriate box:*

☒ Union Pacific Rules

☐ Timetable

☐ Other: (specify) \_\_\_\_\_

in connection with: (describe incident) Running the BR 160 into  
the ATS-8901J

Section Two, as completed by the MTM, states:

Under the UPGRADE Discipline Assessment Table, the violation listed in Section One requires a minimum discipline of LEVEL 3.

Section Three provides for the specifics of any disciplinary action within the preceding 36 months. The form, as completed by the MTM is marked, "None." Section Three further provides, "This equates to a current discipline status of: LEVEL N/A."

Section Four provides for the official completing the form to specify what the current violation and the current discipline status equate to under the UPGRADE. It further provides for the official completing the form to specify whether the violation did or did not result in an incident requiring discipline at the next higher level and concludes, "Therefore, the required discipline for this violation is: LEVEL \_\_\_\_\_." The form, as completed by the MTM, shows Section Four as marked, "N/A."

Section Five provides for the employee to check one of two options: to accept the discipline proposed or to dispute it, in which case a formal investigation is to be held. Rule 48(a) provides, in relevant part:

When employees are offered discipline pursuant to Paragraph (1), such employees shall either accept or reject the offer within fifteen (15) calendar days from the date of receipt of the letter of charges. Discipline shall be considered accepted if formal rejection is not received within fifteen (15) calendar days from the date of receipt of Carrier's letter.

On January 17, 2000, the MTM wrote to Claimant, informing him that no rejection of the proposed discipline had been received and imposed the proposed discipline. The Organization filed a claim which was denied throughout the handling process on the property.

The Organization contends that, by writing N/A in Section Four, Carrier communicated that no discipline was contemplated. The Organization interprets the completed Form 2 as

imposing a reprimand on Claimant.

The Board cannot agree. On its face, Section Four applied where the employee who is the subject of the Form 2, has had prior discipline as noted in Section 3. Claimant apparently had no prior discipline. Thus, the notation, "N/A," on its face, reflected that the Section did not apply to Claimant. However, Section Two plainly stated that "the violation listed in Section One requires a minimum discipline of LEVEL 3." (Emphasis added.) We cannot see how any reasonable person reading this form would interpret it as a reprimand. Clearly and plainly, the form proposed discipline at UPGRADE Level 3.

Claimant maintained that he subsequently received another Form 2 from the MTM, on which the material completed in Section Four had been altered and Discipline Level 3 inserted. The MTM submitted a statement denying altering the Form 2, pointing out that the number 3 inserted in Section Four was not like the number 3 that he had written in Section Two. As an appellate body, we are not in a position to resolve the conflicting statements of Claimant and the MTM. However, in the instant case, the conflict is irrelevant. The critical question is whether, on December 20, 1996, Claimant was informed that Level 3 discipline was proposed. As indicated above, the Form 2 that Claimant admitted receiving plainly informed him that the violations with which he was charged required a minimum discipline of Level 3.

Claimant failed to reject the proposed discipline within fifteen calendar days of December 20, 1996. Therefore, under Rule 48(a) of the Agreement, Claimant was deemed to have accepted it. Carrier did not violate the Agreement when it imposed the five day suspension.

#### AWARD

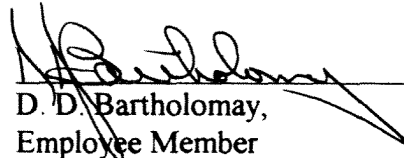
Claim denied.



Martin H. Malin, Chairman



D. A. Ring,  
Carrier Member



D. D. Bartholomay,  
Employee Member

Dated at Chicago, Illinois, June 30, 2000.