

**PUBLIC LAW BOARD NO. 7633**

Case No.: 18/Award No.: 18

System File No.:UP:1578517/BMWED:UP502JF12

Claimant: Jaime Alvarez

-----  
UNION PACIFIC RAILWAY COMPANY )

-and- )

BROTHERHOOD OF MAINTENANCE )  
OF WAY EMPLOYES DIVISION )  
-----

**Organization's Statement of Claim:**

1. The Level 4, Discipline and 10 day suspension without pay to Mr. J. Alvarez for an alleged violation of Union Pacific Rule 1.13 (Reporting and Complying with Instructions) and Rule 1.15 (Duty Reporting or Absence) was not justified.
2. As a consequence of the violation referred to in Part 1 above, the Claimant shall be reinstated with all rights due to him under the Collective Bargaining Agreement.

**Facts:**

By letter dated October 10, 2012 the Claimant was directed to attend an investigation and hearing on October 16, 2012 "to develop the facts and place responsibility, if any, that while employed as a Machine Operator on Gang 9160, at Houston, Texas, you allegedly failed to comply with instructions for taking days off and being absent without authority on September 14<sup>th</sup>, 2012."

The letter further noted that Rule 1.13 and Rule 1.15 were allegedly violated. The investigation was postponed first to November 8, 2012 and again to November 14, 2012.

**Carrier Position:**

The Claimant's failure to call his acting Track Supervisor prior to missing work and the failure to provide documentation upon his return constituted substantial evidence of his infractions. Documentation was provided only after the Claimant was charged. Tie Gang South Policy, Sections A and B were violated. The Claimant's one minute call after the beginning of his tour was insufficient. As in other cases where discipline was

upheld, the Claimant had not received authority to be absent. The Carrier has provided substantial evidence of the Claimant's violations, which destroyed trust and created a safety issue. Therefore the discipline was appropriate and should not be set aside by the Board. The Claimant was given a fair and impartial hearing after a mutually agreed upon postponement.

**Organization Position:**

Unilateral postponement of the investigation by the Carrier violated Rule 22. Thereafter the Carrier failed to meet its burden of proof. The allegedly violated rules were never entered into the record and cannot now be considered by this Board. The Notification of Discipline makes no reference to the Tie Gang Policies allegedly violated, therefore this Board should not consider those policies. Even if they are considered there is evidence that the Claimant sought medical attention on September 14, 2012 and that Supervisor Ritch provided conflicting testimony about the Claimant's call on September 14, 2012. The policy concerning absenteeism is absurd as it requires two-day notice of illness or a call one hour before starting time when the Claimant was violently ill. The Level 4 UPGRADE discipline served only to punish and not to correct. The Claimant tried to comply with the policy but was prevented by illness from doing so and ultimately provided a doctor's note, although not on his first day back to work.

**Findings:**

The Board has considered the procedural issues raised by the Organization: an alleged unilateral postponement of the investigation and the absence of the relevant rules and Tie Gang South Policy from the record. Rule 22(b) incorporates the parties' agreement that an "investigation may be postponed or time limits referred to herein extended by mutual agreement. . ." The investigation was initially scheduled for October 16, 2012, postponed first to November 8, 2012 and postponed again until November 14, 2012. The second postponement was mutually agreed to. Hearing Officer Jonathan C. Phillips responded to the Organization's objection to the alleged unilateral postponement as follows:

To your objection about the Postponement Notice, as you stated with our telephone conversation, due to other investigations being held the Nov- November 8<sup>th</sup> date was the absolute earliest we could hold the investigation, due to other investigations and people being on vacation

Due to the fact that you have multiple union representatives, and we are never aware of who's going to be representing each particular employee, there is no way for me to know who to contact to send the postponement out. So we gave it the original earliest date that we could hold the investigation and as per our conversation, it was open to any day after that, so we mutually agreed to move it to November 14<sup>th</sup> (Carrier Exhibit A, Transcript, pp. 11-12).

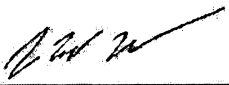
The explanation provided substantial evidence that the first postponement was unilateral. The mutual postponement that followed did not cure the violation of Rule 22(b), which is clear and unambiguous. Because the Board must honor the language of the collective bargaining agreement, the claim must be sustained without consideration of the merits. Consideration of the Organization's challenge based on the absence of relevant rules and Tie Gang South Policy is moot.

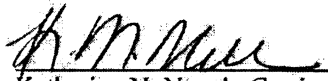
**Award:**


Claim sustained.

**Order:**

The Board, after consideration of the dispute identified above, hereby orders that the record of the Claimant be cleared and that he be reimbursed for any net loss of compensation resulting from the imposition of the Level 4 UPGRADE discipline. The Carrier is to make the award effective on or before the thirtieth (30<sup>th</sup>) day after the award is adopted.

  
\_\_\_\_\_  
Andrew Mulford, Organization Member

  
\_\_\_\_\_  
Katherine N. Novak, Carrier Member

  
\_\_\_\_\_  
I. B. Helburn, Neutral Referee

Austin, Texas  
February 6, 2015