

Public Law Board No. 7633

PARTIES) **Brotherhood of Maintenance of Way Employees Division**
) **– IBT Rail Conference**
TO)
) **and**
DISPUTE)
)
) **Union Pacific Railroad Company (former Missouri Pacific**
) **Railroad Company)**

Members of the Board

Jeanne M. Vonhof, Chairman and Neutral Member

Chris Bogenreif, Carrier Member

John Schlismann, Employee Member

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (MAPS Training 1) of Mr. L. Garcia, by letter dated October 3, 2022, for an alleged violation of Rule 136.4.1: Exclusive Track Occupancy, Rule 136.3: Job Briefings, Rule 136.8.2: Responsibilities of the Roadway Worker and Rule 1.13: Reporting and Complying with Instructions was exceedingly harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File UP907JC22/1779788 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant L. Garcia shall now have '... the MAPS Training 1 be removed from his record....')."

FINDINGS OF THE BOARD:

The Board upon consideration of the entire record and all the evidence, finds that the parties

herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended and that the Board has jurisdiction over this dispute.

The Claimant, Larry Garcia, has established seniority in the Company's Maintenance of Way Department. The Claimant has approximately twenty-five years of service with the Carrier and no prior record of discipline. He was assigned to a Foreman position at the time of the events leading to this claim.

The Claimant was charged with working on August 23, 2022 within the limits of a Form B without proper job briefing or authorization from a Form B EIC. The Carrier concluded, after an investigation held on 09/22/2022 that the Claimant was guilty of these violations and also was observed displaying red flags within the Form B limits, against procedures and standards. The Carrier concluded that the Claimant had violated the following rules and/or policies: 136.4.1 Exclusive Track Occupancy; 136.3 Job Briefings; 136.8.2 Responsibilities of the Roadway Worker; and 1.13:Reporting and Complying with Instructions. By notice dated 10/03/2022 the Claimant was notified that, based on his current record, he would receive a MAPS I training.

The Claimant was working as the Track Foreman and Employee-in-Charge (EIC) of a four-person work gang on August 23, 2022. They were cutting rail off-track. EIC Zamora, who was directing a work group that was working on-track, asked the Claimant for assistance from his group with on-track welding of frog plates at Milepost 12.68. The Claimant agreed and proceeded to take his group on-track. EIC Zamora had procured a Track Warrant which provided exclusive track occupancy between Mile Posts 12 and 13 on the Rockport Subdivision. However, there was a Form B between Mile Post 8.0 and 12.8. Therefore, neither Zamora's nor the Claimant's group had protection, as they were working within a Form B without permission to be within the Form B area. In addition, Zamora directed that red flags be

placed within the Form B, which deviates from the Company's safety norms. It was this action which triggered a review of the situation and eventually led to the Claimant's discipline.

The Organization argues that the Carrier violated procedural safeguards under Rule 22 because it had a preconceived judgment that the Claimant was guilty when it sent the August 31, 2022 Notice of Investigation. According to the Organization, the Carrier held the Claimant's hearing not as a reasonably objective inquiry, but only as a formality required by the Agreement, before announcing its preconceived judgment. As further evidence of this preconceived judgment, the Organization relies upon the Carrier's removal of the Claimant from service and withholding compensation from him before the formal investigation was held.

The Board concludes that the Carrier does not violate an employee's due process rights when they remove the employee from service when they are facing allegations of certain very serious violations. Rule 22(i) permits withholding employees from service, pending a formal investigation, where the employee has been charged with a serious or flagrant violation of its rules. In addition, the record of the investigation, taken as a whole, does not demonstrate that the Hearing Officer prejudged the guilt of the Claimant. The evidence demonstrates that the investigation was thorough and the Hearing Officer did not display bias against the Claimant in the presentation of documents or questioning of witnesses throughout the hearing.

As for the merits of the claim, the Carrier argues that there is substantial evidence that the Claimant and his work group were fouling the track without authority or protection. In addition, the Carrier argues that there was not a proper job briefing which examined whether there was Form B authority on this portion of the track and that the red flags were placed within the Form B authority. For these reasons the Carrier argues that there is substantial evidence demonstrating that the Claimant violated the listed rules: Rule 136.4.1: Exclusive Track Occupancy, Rule 136.3: Job Briefings, Rule 136.8.2: Responsibilities of the Roadway Worker and Rule 1.13: Reporting and

Complying with Instructions.

The Board concludes that there is substantial evidence that the Claimant's work gang occupied the track, at his direction, without proper authority and therefore, without proper protection. This is a clear violation of Rule 136.4.1. The Organization argues, however, that the Carrier's rules make clear that there can be only one Employee-in-Charge when two groups are working on a track, and the EIC in this case was Zamora. In addition, the Organization argues that there was a job briefing, but that EIC Zamora failed to inform the Claimant that there was a Form B in effect over the same portion of track. Zamora has taken responsibility for his mistake, the Organization argues, and responsibility for the violation should not be placed on the Claimant as well.

Nevertheless, the Board concludes that each employee is responsible for ensuring that they have protection when fouling track, and the Claimant failed to do so in this case. He had access on his laptop to any Form B that might be affecting the portion of track that he and his crew were fouling. Claimant is a long-term employee who said that he always checks to ensure that there is no conflicting track authority but, in this case, he relied instead upon EIC Zamora, who Claimant says provided him with incorrect information. Claimant's job briefing with Zamora was inadequate and he should have been conducting a job briefing with whoever was holding the Form B authority. Furthermore, permitting his gang to rely upon the red flags for extra protection when they were not permitted within the Form B authority also violated the rules.

Therefore, the Board concludes that there is substantial evidence that the Claimant violated the cited rules. The Organization argues, however, that if he did violate the rules he should have received only a coaching, as was assessed to the rest of his crew, rather than a MAPS 1 training.

However, the Claimant was the Employee-in-Charge of his gang and it was under his direction that they fouled the track without protection. Therefore, the Board cannot conclude that the discipline assessed was harsh, arbitrary or excessive.

AWARD

For the reasons set forth above, the claim is denied.

Signature 

Jeanne M. Vonhof
Neutral Member



Chris Bogenreif
Carrier Member



John Schlismann
Organization Member

Dated: May 2, 2025