

PUBLIC LAW BOARD NO. 7633

Case No.: 23/Award No.: 21
System File No.: UP: 1580239/BMWED: CE1000112112
Claimant: David Brown

UNION PACIFIC RAILWAY COMPANY)
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION)

Organization's Statement of Claim:

1. The Level 4 UPGRADE discipline assessment (10 Day Suspension) to Mr. D. Brown 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 November 30, 2012 the Claimant was directed to attend an investigation and hearing "to develop the facts and place responsibility, if any, that while employed as Trackman on Gang No. 1104, at Bloomington, Illinois, near Milepost 125.95, Joliet Subdivision, at approximately 0700 hours, on November 21, 2012, you allegedly failed to report to work on time. Gang 1104 start time is 0700 hours, and you reported at 0735 hours, with no notification to your supervisor."

The letter further noted that the Rules allegedly violated were Rule 1.13 Reporting and Complying with Instructions and Rule 1.15 Duty—Reporting or Absences and that a proven violation could result in Level 4 discipline (10 days suspension without pay or up to five days training without pay and the development of a Corrective Action Plan) under the Carrier's UPGRADE policy, as the Claimant was currently at a Level 3 discipline status. The claimant was further informed that he might be eligible to waive discipline under the Safety Analysis Process (SAP) and that if he so desired his request for SAP participation had to come before the investigation, which was postponed until December 13, 2012.

Carrier Position:

Substantial evidence shows that after coaching, the Claimant was late to work on November 21, 2012 and absent from work on November 27, 2012. The testimony of Charging Officer MTM Patten is un rebutted because the Claimant did not attend the investigation. Notice was sent to his address of record on file. The Claimant had appropriate representation at the investigation. The Claimant's failure to obtain authorization for his absences was a serious violation deserving of the discipline enforced. He received a fair and impartial hearing. His absence from the investigation allowed unrefuted testimony of his Rules violations.

Organization Position:

There was no fair and impartial investigation because the Claimant was not properly notified of the Carrier's unilateral postponement of the investigation; thus the investigation was held without the Claimant being present, the Notice of the postponed hearing having been returned to the Carrier due to an insufficient address. The Carrier knew this when it proceeded with the investigation. The Carrier has not met its burden of proof, but if it has, the discipline was excessive, serving to punish but not to rehabilitate. Absence of the proper notice of the postponed investigation affected the Claimant's ability to waive discipline under the Safety Analysis Process.

Findings:

The initial Formal Notice of Investigation, sent via UPS to the Claimant's address of record, was signed for by "Jane." The Board assumes that the Notice reached the Claimant. The investigation was subsequently postponed and notice of the postponement was sent via U.S. Postal Service, but was returned marked as insufficient address. There is no indication that the Claimant, unaware of the postponement, appeared for the initially-scheduled investigation. However, the Board assumes that the Claimant would have been a no-show at the postponed investigation had he received Notice, since he did not respond to the Notice signed for by "Jane." Responding to the unique facts of this case, the Board finds that the Carrier met the requirement to provide a fair and impartial hearing despite the Claimant's absence.

At the hearing, the Carrier provided more than substantial evidence that the Claimant failed to report on time and did not notify his supervisor. He thus violated Rule 1.13 Reporting and Complying with Instructions and Rule 1.15 Duty Reporting and Absence.

Award:


Claim denied.

Order:

The Board, after consideration of the dispute identified above, hereby orders that no award favorable to the Claimant be entered.



Andrew Mulford, Organization Member



Katherine N. Novak, Carrier Member



I. B. Helburn, Neutral Referee

Austin, Texas
February 26, 2015