

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad
(Former Missouri Pacific Railroad)

Case No. 88
Award No. 88

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (MAPS Training 1) of Mr. D. Taylor, by letter dated November 28, 2016, for alleged violation of Rule 136.4: On-Track Safety Procedures was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP522JF16/1677272D MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Taylor shall be afforded all remedy contemplated by Rule 22.”

FINDINGS:

Public Law Board No. 7633, upon the whole record and all the evidence, finds the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction of the dispute herein; the parties were given due notice of hearing before this Board and they participated therein.

The Claimant was disciplined pursuant to a Notice of Investigation dated October 17, 2016, Investigation held November 8, 2016, “to develop the facts and determine your responsibility, if any, in connection with the below charge. On 10/10/2016, at the location of Beaumont, TX, near Milepost 286.23, Houston Subdivision, at approximately 14:00 hours, while employed as a M/O R (BR) Bal Reg, you allegedly entered Form C 98033 without contacting the flaggers, per the Form C, as instructed in the bulletin. This is a possible violation of the following rule(s) and/or policy: 136.4: On-Track Safety Procedures. Under the MAPS policy,

this violation is a Critical event. Based upon your current status, if you are found to be in violation of this alleged charge, Training 1 may result.”


In a discipline letter dated November 28, 2016, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: On 10/10/2016, while employed as a M/O R (BR) Bal Reg, you allegedly entered Form C 98033 without contacting the flaggers, per the Form C, as instructed in the bulletin. This is a violation of the following rule(s) and/or policy: 136.4: On-Track Safety Procedures. Based on your current record, your assessed MAPS status is now Training 1. You are required to participate and successfully complete MAPS Training 1 and any additional training assigned in connection with this violation.”

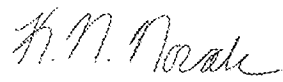
The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties’ respective positions, whether or not specifically addressed herein.

There is not substantial evidence in the record to uphold the Carrier’s determination of culpability. The rule charged by the Carrier does not encompass Claimant’s conduct proven in the record. Therefore, the Carrier did not meet its burden of proof.


AWARD:

Claim sustained.


Robert Grey
Neutral Member
Dated: May 11, 2018



Katheirne Novak
Carrier Member



Andrew Mulford
Labor Member

LABOR MEMBER'S CONCURRENCE
TO
AWARD 88 OF PUBLIC LAW BOARD NO. 7633
(Referee Robert Grey)

I concur with the well-reasoned holding in Award 88 and agree that the Carrier's discipline of Claimant was improper, invalid and must be overturned.

The dispute involved allegations from a RailPro contractor flagman against Claimant that resulted in the Carrier disciplining Claimant. The RailPro flagman was assigned or otherwise allowed by the Carrier to perform Maintenance of Way flagman duties on Carrier property. In this capacity, the RailPro flagman exercised total control over trains, equipment and personnel within a certain segment of Carrier tracks. At the formal investigation, the Carrier contended that Claimant failed to exercise proper on-track safety procedures when entering the RailPro flagman's track authority. At the formal investigation, the Carrier elicited testimony and produced various exhibits (RailPro ID badges, RailPro flagman statements, track maps, photographs, etc.) in support of its case. After review however, the Majority rejected the Carrier's position and concluded that the record failed to establish that Claimant had violated any Carrier rules. The formal transcript and exhibits thereto are incorporated to this concurrence by reference and made a part thereof.

As set forth above, I respectfully concur.

Respectfully submitted,

 5/18/18

Andrew M. Mulford
Labor Member