

PUBLIC LAW BOARD NO. 7660  
CASE NO. 7

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES

PARTIES  
TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY  
(Former Chicago & North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The discipline imposed on Claimants D. Kaminski, D. Dietrich, D. Rodriguez, D. DeWitt, L. Heitman, R. Demlow and H. Sauer in connection with allegations that they improperly reported time was without just and sufficient cause, unwarranted and in violation of the Agreement (System File B-1319C101/1581897 CNW).

2. As a consequence of the violation referred to in Part 1 above, Claimants D. Kaminski, D. Dietrich, D. Rodriguez, D. DeWitt, L. Heitman, R. Demlow and H. Sauer shall have their ‘\*\*\*personal record cleared of the assessed/administered discipline and any notation of said discipline removed from all employee records with new copy furnished, as well as be made whole for all loss incurred as a result, such as but not limited to, wages, retirement, months of service under RRB, reimbursement for loss of health and welfare benefits, or expenses incurred throughout the discipline process and subsequent administered discipline.”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

On February 25, 2012, Claimants worked late and did not report their straight and overtime hours before ending their shift, but did so the following day. Following this incident, they were given a Level 1 formal coaching session regarding the instruction to properly report time on a daily basis, which was documented and entered into their electronic discipline record. This procedure is in accordance with Carrier's UPGRADE policy, which indicates that a formal coaching session may be used for a Level 1 or 2 infraction as an alternative to discipline, and although documented, no new discipline level is established.

The instant claim was filed contending that, due to the documentation of this event in the employees' discipline files, as well as the possibility that excessive Level 1 and 2 violations could result in a violation of Rule 1.13, it constitutes discipline, which issued without Carrier following the contractual due process procedure under Rule 19, including the right to representation. In subsequent appeals, the Organization attached some statements from Claimants stating that they were never coached, but told to sign a faxed form and return it.

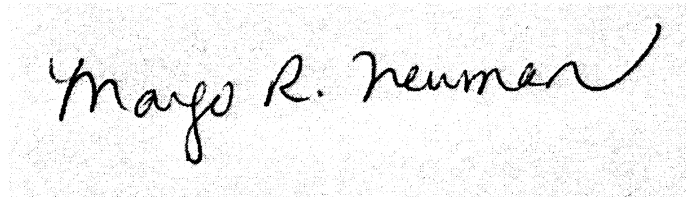
Carrier argues that coaching and counseling is not discipline, that its Guidelines specifically state that a formal coaching does not initiate a discipline level under the UPGRADE policy and is an alternative to discipline, a fact long recognized by the Board, citing Public Law Board No. 7660, Award 3; Public Law Board No. 6302, Award 199. It maintains that the procedures of Rules 19 and 21 are not applicable to coaching sessions, and that the remedy requested by the Organization is excessive, as there were no adverse consequences suffered by Claimants in this case. Carrier notes that coaching is designed to improve an employee's performance, provide training and education in rules, and foster open communication between employees and their managers.

A careful review of the record convinces the Board that the Organization has failed to meet its burden of proving a violation of the Agreement in this case. The precedent makes clear that the type of counseling involved in this case is not considered to be disciplinary action under Carrier's UPGRADE policy, and that documentation of

Claimants' formal coaching event does not convert this into discipline under the Agreement. See, e.g. Public Law Board No. 6302, Award 199; Public Law Board No. 7660, Award 3. This is true regardless of the form that this coaching event takes - verbal discussion or written acknowledgement of the applicable rules and procedures.

AWARD:

The claim is denied.



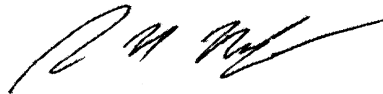
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Margo R. Newman  
Neutral Chairperson



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K. N. Novak  
Carrier Member



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Andrew Mulford  
Employee Member

Dated: 09/01/2015

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