

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad

Case No: 131  
Award No: 131

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier unjustly treated Mr. H. Lopez by assessing him a formal coaching and recorded such in his employment record on July 27, 2017 for an alleged unexcused absence on July 26, 2017 (System File B-1748U-208/1693508 UPS).
2. The Agreement was further violated when the Carrier refused to convene a Rule 48 unjust treatment conference which was requested by the Organization by letter dated August 11, 2017.
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, the Carrier shall remove the letter completely from Claimant H. Lopez’s employment file, the alleged violation shall be expunged from his employment record and he shall be made whole for any and all loss suffered.”

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.

At the time of incident, the Claimant was assigned as a System Fuel Truck Driver on Gang 8501. Gang 8501 was working a T-2 compressed half work schedule, and the assigned workdays for the second half of July 2017 were July 24<sup>th</sup> – July 31<sup>st</sup>. The Carrier alleged the Claimant failed to report to work on July 26, 2017. As a result, the Carrier supplied the Claimant with an Attendance Alert and Advisory letter dated July 27, 2017.

On August 11, 2017, the Organization made a formal request for an unjust treatment conference pursuant to Rule 48(n) of the Agreement based upon the Attendance Alert and Advisory letter noted above. Based upon the Carrier's failure to grant the requested conference, the Organization filed claim on the matter, which is now before the Board.

The Organization argues a) the Carrier violated the Agreement when it refused to grant the Claimant an unjust treatment hearing per Rule 48(n), b) the Carrier's defense against denying the unjust treatment hearing is disingenuous and without merit, and c) the Claimant overslept on the day in question and similarly situated employees have been treated differently.

The Carrier argues a) the Carrier has the managerial right to have an attendance policy and to coach/conference and train its employees; such is not to be considered unjust treatment, b) the Organization failed to follow the appropriate method to challenge the Claimant's coaching, and c) the Organization failed to meet its burden of proof.

Based upon a thorough review of the record, and the specific facts presented here, the Board finds nothing in the agreement that requires the Carrier to provide an unjust treatment hearing to the Claimant in a coaching or training matter such as this.

Turning to the merits, there is no dispute here that the Claimant had overslept for the start of his shift on July 26, 2017. However, the Organization argues that other similarly situated employees have been treated differently. In the Organization's last say letter dated June 1, 2018, the Organization attached two emails dated July 31, 2017 and March 2, 2018. The two emails allege disparate treatment of the Grievant, not only for the event giving rise to this claim, but for other incidents as well. Although the Organization alleges mistreatment of the Claimant by supervision, there was simply no evidence in the record to support the allegation. Allegations, in and of themselves, do not constitute proof. That being said, it should be noted that the Carrier has forwarded the Claimant's allegations to the EEO department for handling.

Based upon all the above, the Board finds the Organization failed to meet its burden and convince the Board the Carrier violated the Agreement. As such, the claim is denied.

Although the Board may not have repeated every item of documentary evidence nor all the arguments presented in the record, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD:

The claim is denied.




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Paul Betts  
Neutral Member  
Dated: 08/01/2019



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Chris Bogenreif  
Carrier Member  
Dated: 08/01/2019



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Andrew Mulford  
Labor Member  
Dated: 08/01/2019