

PUBLIC LAW BOARD NO. 7660  
AWARD NO. 175

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION - IBT RAIL CONFERENCE

PARTIES  
TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

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

1. The Carrier's discipline (dismissal) imposed upon Mr. J. Linarez, by letter dated April 3, 2019, in connection with allegations that he violated Rule 74.5 Seat Belts was excessive, arbitrary, disparate, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File MK-1948U-602/1720997 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Linarez shall '... be made whole by compensating him for all wage and benefit loss suffered by him for the Level 5 termination, and the alleged charge(s) be expunged from his personal record.' (Employees' Exhibit 'A-2')."

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.

Claimant has been employed by the Carrier for almost 17 years and worked as a Thermite Welder Helper Truck Driver Hyrail at the time of the incident in question. Claimant received a Notice of Investigation dated February 25, 2019, advising him that he was charged with failing to wear his seat belt when traveling approximately 75 feet at 4 m.p.h. to set the hyrail truck on the crossing on January 30, 2019. As this was considered

a critical rule violation and Claimant was at MAPS 2 level, he was removed from service pending the results of the investigation. After a postponement, the Investigation was held on March 14, 2019, and Claimant was served with a Notice of Discipline Assessed dated April 3, 2019, finding him guilty of the charges in violation of Rule 74.5, Seat Belts. Claimant was dismissed from service due to his discipline status in the MAPS system. This claim protests such action.

The Carrier's trucks are equipped with drive cams, which are triggered by some event, such as driving over a curb or bump causing an unnatural movement. Once that occurs the drive cam video footage is reviewed by a designated Manager, who, in turn will notify the line of supervision of the employee involved. In this case, the Manager of Track Maintenance and the Senior Manager of Track Projects were given the video on January 30, reviewed it, and it was assigned to Claimant's supervisor to investigate. Both Managers testified that the video showed Claimant driving off a curb (which triggered the drive cam) from an area adjacent to the track towards the track to set on the hyrail without wearing his seat belt. Claimant admits not wearing his seat belt during this time. His supervisor, who investigated the site, approximated where Claimant's truck had been parked during the morning briefing, as well as the distance he drove to get to the track as being approximately 75 feet. It was agreed that the video cam was only triggered by Claimant driving off the curb, and not by his failure to wear a seat belt.

Claimant explained that he was parked on a dirt area on the side of the track 20 feet from the road, during his Foreman's job briefing. He stated that his Foreman went in his truck to secure the crossing so he could set the hyrail on the track, and he followed. Claimant testified that he started off wearing his seat belt and he drove about 10 feet when he was alerted by a buzzing sound indicating that his passenger side door was open.

He stated that he removed his seat belt to reach over to close the door, and then started driving again without putting his belt back on, going over a curb which must have triggered the drive cam. He indicated that the entire distance he drove was about 50 feet and that his seat belt was off for a matter of seconds. Claimant understood that he was in the crossing at the time, but admitted that he forgot to put his seat belt back on when he should have. It is agreed that Claimant never drove over 5 m.p.h. and that he never had a seat belt violation previously. The Manager of Track Maintenance admitted that Claimant was a great guy who normally follows the rules.

The Carrier contends that the charges and hearing were timely, and that the charges against Claimant were proven by substantial evidence, as he admitted not wearing his seat belt, a fact confirmed by the drive cam video. It asserts that the discipline issued was warranted for a violation of a critical rule, since Claimant was already at a MAPS level 2 in the discipline procedure, and dismissal was the next progressive step. The Organization argues that the hearing was not timely held and that Carrier should not have entered into the record a copy of a prior settlement reinstating Claimant to work because it was nonprecedential. It claims that the Carrier failed to meet its burden of proving that Claimant violated Rule 74.5 since his actions fell within the exception to that rule, as he was already in a crossing and driving under 5 m.p.h. The Organization maintains that the penalty assessed was arbitrary and unwarranted, unduly harsh and excessive, and failed to take into account mitigating factors and Claimant's length of service.

On the basis of the entire record, the Board concludes that, although the evidence reveals that Claimant was not wearing his seat belt for a short distance when he should have been, the Carrier has failed to meet its burden of proving that the penalty of dismissal was reasonable or appropriate in this case. It was agreed that this type of violation

would have normally resulted in a coaching, and that Claimant's MAPS level 2 status was the only reason why he was dismissed in this case. Claimant is an admittedly good worker, a long service employee, who took responsibility for his failure to replace his seat belt after removing it to close his passenger door, clearly understood the rule and the importance of compliance with it, and made clear it was a mistake and not a purposeful act on his part. He has never been cited for a violation of the Seat Belt rule previously, and testified that he always tries to comply with it. Considering the numerous mitigating factors, including Claimant's long and admittedly good service, the Board is of the opinion that he should be granted the opportunity to return to work at his disciplinary level at the time of the event, but without any compensation.

AWARD:

The claim is sustained in accordance with the Findings. The Carrier is ordered to make the Award effective on or before 30 days following the date of the Award.

*Margo R. Newman*

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Margo R. Newman  
Neutral Chairperson

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*Chris Bogenreif*  
Christopher Bogenreif  
Carrier Member

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*John Schlismann*  
John Schlismann  
Employee Member

Dated: March 31, 2022

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