

PUBLIC LAW BOARD NO. 7660

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)		
DIVISION – IBT RAIL CONFERENCE)		
	) Case No. 241	
and)		
	)	
UNION PACIFIC RAILROAD COMPANY)		
SOUTHERN PACIFIC TRANSPORTATION COMPANY)		
(WESTERN LINES)])		

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. M. Gonzalez, by letter dated November 30, 2021, in connection with allegations that he fouled Main Track 1 without any proper protection (on track safety) in violation of Rule 136.4.1; Exclusive Track Occupancy was excessive, arbitrary, disparate; without the Carrier having met its burden of proof; and in violation of the Agreement (System File M-2245S-502/1770834 SPW).
2. As a consequence of the violation referred to part 1 above, Claimant M. Gonzalez shall now have the dismissal ‘...expunged from his personal record. Claimant be immediately reinstated to service and compensated for all wages lost, straight time and overtime, beginning with the day he was removed from service and ending with his reinstatement to service excluding all outside wage earnings. Claimant be compensated for any and all losses related to the loss of fringe benefits that can result from dismissal from service, i.e., Health benefits for himself and his dependents, Dental benefits for himself and his dependents, Vision benefits for himself and his dependents, Vacation benefits, Personal Leave benefits and all other benefits not specifically enumerated herein that are collectively bargained for him as an employee of the Union Pacific Railroad and a member of the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters. Claimant is to be reimbursed for all losses related to personal property that he has now which may be taken from him and his family because his income has been taken from him. Such losses can be his house, his car, his land, and any other personal items that may be garnished from him for lack of income related to this dismissal.’ (Employees’ Exhibit ‘A-2’).”

FINDINGS

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employer within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction of the dispute herein, and that the parties to said dispute were given due notice of hearing in the matter and participated therein.

Marcos Gonzalez (the Claimant) at the time of his dismissal held the job of Welder in the Carrier's Maintenance of Way department with approximately ten years of service. By letter dated November 8, 2021 (a revision of a letter originally sent on October 27, 2021), he was requested to report for a hearing on November 11, 2021, to determine the facts and determine his responsibility, if any, in connection with the following charge:

On 10/21/2021, at the location of MP 603.53, Alazon CPRV 604, Main Track 1, at approximately 10:15 hours, while employed as a Welder, you allegedly fouled Main Track 1 without any proper protection (OTS) with Union Pacific's vehicle 50018, using its boom extending over Main Track 1 (which was live track) with a replacement rail attached to the boom with rail tongs. Also, with welding equipment, persons, and tools to repair a broken rail in the Main Line crossover track (which was out of service) that connects Main Track 1 to Main Track 2 (also live track). This is a possible violation of the following rule(s):

136.4.1: Exclusive Track Occupancy

The November 8 letter to him further stated: "Under the MAPS Policy, this violation is a Dismissal event. Based upon your current status, if you are found to be violation of this alleged charge, Dismissal may result."

On October 21, 2021, the Claimant and his welding partner (at times CWP) were working together as a welding team. A Track Inspector called CWP (Claimant's welding partner) and told him that there was a broken rail at the Alazon station, to pick up an IJ [insulated joint], and fix the broken rail. The broken rail was on a crossover track between Main Track 1 and Main Track 2. In the conversation the Track Inspector informed CWP that the track was out of service. After they had been working on the repair for a few hours, the Dispatcher called CWP and asked who was working. CWP told him. About five or ten minutes later the Corridor Manager called and instructed CWP that they had no protection on Main Truck 1 and to "clear up." In a written statement about the incident, CWP recited the foregoing facts and added, "I am totally aware that I should have double-checked the protection and I am at fault."

In his testimony at the investigative hearing, in response to questions by the hearing officer, CWP stated as follows. He and the Claimant got the call from the Track Inspector about the broken rail. They picked up a piece of rail, and while they were driving to Alazon, they got a call from the Track Inspector again, saying that the track was out of service. The Track Inspector did not specify

which track. When CWP and the Claimant arrived at the repair site, they did not request track and time or foul time to repair the broken rail. Nor did they call the Dispatcher for an on-track safety permit. The only protection CWP thought they had was based on his conversation with the Track Inspector. CWP was not the EIC [Employee-in-Charge] for his work group. The Track Inspector was supplying the on-track protection.

In response to questions from the Organization representative, CWP testified that the Track Inspector told them that the track was out of service and that they were protected from trains on the Shafter track and on the No. 1 track. He (CWP) explained that the Shafter track comes in on the crossover and goes through Main Track 2 into Main Track 1. The Track Inspector did not tell them that they needed to obtain their own track protection. He asked the Track Inspector, CWP testified, if he wanted him to pull the track out of service, and he (the Track Inspector) said no, that he would handle it. The Track Inspector's name was on the track being pulled out of service, according to CWP, which made him the Employee-in-Charge of that defect.

The Manager of Track Maintenance testified that no track and time had been granted to make the repair in question at the Alazon station. Nor had an out-of-service track, foul time, or any other permission been given in connection with performance of the repair work. The Corridor Manager, he stated, called CWP and Claimant and inquired what their on-track safety was on Main Track 1. He was told that they had track out-of-service on-track safety. He told them that only the crossover track was out of service, but not Main Track 1. He instructed them that they needed to clear the track. On October 5, 2021, the Claimant received a passing score on a course he took called Engineering Safety Services Mandated Training that covered on-track safety.

Another witness, a Foreman, who was aware of the track repair work being performed at the Alazon station, testified that he was concerned because his CAD screen showed that the crossover was out of service but that no permit had issued in connection with the work. He went to the Alazon work site to check on the workers, and as he arrived he heard the Corridor Manager say to get off the track, that there was no proper protection. The Foreman asked CWP about a permit. CWP said, "We were told it was out of service." The Foreman replied, "No, the crossover is out of service." Prior to arriving at the scene at Alazon, according to the Foreman, he had called the Track Inspector and mentioned that he was curious why there was not a permit issued for the repair work at Alazon. The Track Inspector said, the Foreman testified, "I don't know. I told them the crossover was out of service."

The Track Inspector also gave a written statement about the incident as follows:

On my East Bou[n]d Inspection Elko to Alazon on Main Two around 9:30. When I found a broken rail at the xovers at Alazon. On Main One. So I call the M.T.M. [Manager Track Maintenance] Bone about the broken rail. So I took the xovers out of service. Then I call the Welders and I told them the xovers are out of service at Alazon. I also call the Signal Maintainer Rober[t] Cook. And he told me he did not have to be there for the broken rail. So I call back to the Welders and told them soon they get to Alazon they can start working on the

broken rail since we don[']t need a Sig[n]al Maintainer and track is out of service. Then I continue my inspection East Bound to Wells.

At the investigative hearing, the Track Inspector gave testimony as follows in response to questions by the hearing officer: He saw a broken rail as he approached Alazon, took some pictures, called his Manager, and sent him the pictures. He then called the Dispatcher, told him of the broken rail on the crossover at Main Track 1, and that he wanted to take the entire Main 1 out of service. The Dispatcher said not to take the whole track out of service because of the westbound traffic on Main 1. The Dispatcher said that all he had to do was take the crossover out of service, and that is what he did. He then called CWP and the Claimant and spoke with CWP. CWP correctly stated that he (the Track Inspector) was the EIC of the broken rail. He told CWP that the crossover was out of service. He did not tell him that the Main Line 1 was out of service.

In response to questions from the Organization Representative, the Track Inspector testified as follows. He found the broken rail, pulled the broken rail out of service, and returned the track back to service after it was fixed. This particular location did not require a Signal Maintainer for the repair. After his conversation with the Signal Maintainer, he called CWP and the Claimant and said that they could go to work. He did not at any point notify the Claimant and CWP that they needed to pick up their own foul time to be protected on the track. He did not do so because he had train traffic right behind him and Dispatch wanted him to get out of the way.

In response to the hearing officer's questions, the Claimant testified as follows. He knows Rule 136.4.1. He knows that he was sitting on MAPS Status 2 prior to this event. He received CBT training. On Rule 136.4.1 he is familiar how to get track and time. He is familiar with how to get foul time, Form B protection, and track out-of-service. He and CWP were getting their tire changed because of a flat. Someone called and said that there was a broken rail, that he couldn't get to it, and if they would mind picking up an IJ and going to Alazon. CWP, who answered the phone, said that they would do so as soon as they got the tire fixed. He believes that it was the Track Inspector who called. He (the Claimant) does not get phone calls. They went, got the IJ, loaded it on their vehicle, and then drove west up the right-of-way up to Alazon. On the way they saw the Track Inspector hyrailing on Main Track 2 heading east. He said that he had to clear up because of an eastbound train. He told them that he had talked to [Signal Maintainer] Cook and to go ahead, there were no trains, the track was out of service, and to get it done. They proceeded to the repair site, made the necessary measurements, cut everything to fit, welded out the new piece, and just as they were finishing up Dispatch called and asked if they had seen the Track Inspector at the location. They said no. A little while later the Dispatcher called back and asked what coverage they had. They said that the track was out of service. The Dispatcher said no, the crossover was out of service. He asked if they were fouling Main Track 1, and they said yes, they were on Main 1. He told them that they had to clear immediately, and they did. The Claimant explained that when he said that they were fouling Main Line 1, he meant that they were parked on the right-of-way road next to that track. Asked whether he had a job briefing about on-track protection, the Claimant stated, "No, other than the track was out of service."

In response to questions from the Organization representative, the Claimant testified that he and CWP are both Welders, that they work out of the same truck, and are both assigned to the same gang. He stated that he does not normally pick up on-track protection, that CWP does. On the day in question, he stated, he did not have his computer with him or available to look at the Auto CAD. At no time before working on the track, according to his testimony, did he personally speak with the Track Inspector. The conversations were between the Track Inspector and CWP. CWP informed him, the Claimant testified, that the tracks were out of service. Asked whether he was under the impression that he was protected on the track and able to work safely, he stated, "Absolutely, yes." According to the Claimant's testimony, when, on the way to the job site at Alazon, they met the Track Inspector hrrailing eastbound on Main Track 2, the Track Inspector said to them that he would see them in a little bit.

Later, the Claimant testified, he told them that he had been called to meet a tow truck where a car had been hit by a train.

The Carrier takes the position that the Claimant's dismissal for a clear violation of Rule 136.4.1: Exclusive Track Occupancy was warranted, supported by substantial evidence, and in accordance with the Agreement and the Carrier's progressive discipline policy. In addition, the Carrier maintains, the investigation was fair, impartial, and conducted in accordance with the Agreement. The evidence shows, the Carrier argues, that the Claimant's vehicle fouled Main Track 1, for which no on-track- safety (OTS) protection had been obtained, while he and his welding partner were repairing a rail on an adjacent crossover track that did have such protection. The Claimant's action, the Carrier asserts, exposed employees, equipment, and train operations to catastrophic risk and demonstrated a fundamental disregard for the most basic and critical safety procedures designed to prevent loss of life and serious injury. The Carrier notes that Claimant had previously completed federally mandated safety training, which included OTS protection. The Carrier notes that at the time of the incident the Claimant was at MAPS Training 2 status and contends that progression to dismissal for his October 21, 2021, violation was appropriate and consistent with established procedures. It argues that the Claimant admitted his guilt and that this in itself was sufficient proof for the imposition of discipline.

The investigative hearing showed, the Carrier argues, that Claimant had not verified which tracks were out of service, had not copied the correct track protection during the job briefing with the Track Inspector, and had not contacted the Dispatcher to confirm protection after the Track Inspector left the work area. These omissions, the Carrier asserts, directly contributed to the safety violation and reflect breakdown in judgment and responsibility that cannot be tolerated in safety-sensitive operations. The Claimant himself, the Carrier contends, admitted to the rule violation, thereby eliminating any factual dispute regarding the incident. The Claimant's violation, the Carrier maintains, was of such a serious nature that his continued employment would pose an unacceptable risk to the safety of railroad operations.

The Organization contends that the Carrier failed to meet its burden of proof in this case. The Track Inspector, who was also the EIC on the track repair job in question, the Organization asserts, discovered the broken rail on the crossover track at Alazon and took that track out of service. The Track Inspector, the Organization states, then informed CWP that the track was out of service and that he and his welding partner, the Claimant, should begin the repair work immediately. CWP, according

to the Organization, then informed the Claimant that the track was out of service and that CWP and the Claimant should begin work replacing the broken rail immediately. The Organization quotes the following provision from Rule 136.4.1 (G) Track Out of Service: “All movements, including train and engine movements, within the out-of-service track will be made under the authority of the employee-in-charge. . . .” There is no question that the Track Inspector was the EIC, the Organization argues, and that he expressly told CWP and the Claimant that they could start working the broken rail. They did, in fact, do so, the Organization notes.

The Organization asserts that a breakdown in communications occurred in this case between the Track Inspector and CWP, which resulted in CWP taking full responsibility for the incident in question. “The Claimant,” the Organization argues, “who was merely driving the truck while these job briefings occurred, was in the wrong place, at the wrong time. However,” the Organization continues, “the fact that the Claimant happened to be at a location where a track authority violation occurred does not imply that it was the Claimant who violated the track authority rule.” The Claimant, the Organization contends, did not violate Rule 136.4.1, but was acting on faulty information relayed to him by the EIC Track Inspector and his welding partner. The Organization cites awards which it contends support its position. The Organization further argues that the discipline imposed was arbitrary, unwarranted, and excessive.

The Organization is attempting to make a separation between the Claimant and his welding partner. It makes the argument that the Track Inspector’s communications were only with CWP, who then instructed the Claimant that they had track out of service protection for the repair job at Alazon. According to the evidence, however, neither the Track Inspector nor the Claimant viewed the Track Inspector’s communications concerning the repair of the broken rail at Alazon as private conversations between the Track Inspector and CWP. In his statement introduced into evidence as Carrier Exhibit 11 and read out loud at the hearing (Tr. 31), for example, the Track Inspector stated:

. . . I also called the Signal Maintainer, Robert Cook, and he told me he do not have to be there for the broken rail. So, I called back to the Welders and told them soon they get to Alazon they can start working on the broken rail since we don’t need a Signal Maintainer and track is out of service. Then I continue my inspection eastbound to Wells.

Clearly the Track Inspector viewed his conversation as taking place between him and both Welders. The Claimant testified about that same conversation, erroneously (apparently) recalling it as being in person rather than by phone. His testimony, however, indicates that he heard on his own what was said by the Track Inspector or, in any event, considered the Track Inspector’s words as being directed both to him and his welding partner (“he told us”) and not just to the latter:

We . . . then . . . went up the right-of-way road going . . . west . . . up to Alazon. We saw [the Track Inspector] hyrailing on Main 2 heading east. Said that he had to clear up because of a eastbound train. And he told us to go ahead and – and he had talked to Cook and go ahead and – and get it done. No trains, track’s out of service, get it done. (Tr. 79)

More basically, however, this Board finds no basis in the Agreement or in any authority cited by either party for making a distinction between the Claimant's responsibility and that of his welding partner for any violation of Rule 136.4.1. They were part of the same welding team. They held the same job title. Neither had supervisory authority over the other. Instructions regarding the repair work to be performed, as both knew, were intended for, and applied to, both of them. They worked side by side at the same location on the same rail repair assignment. If Claimant's welding partner violated the Agreement, so did the Claimant. If not, then Claimant also did not.

Claimant's welding partner did admit fault, writing in his statement, "I am totally aware that I should have double-checked the protection and I am at fault." His partner's admission, however, is not binding on the Claimant. The pertinent rule, 136.4.1 states as follows:

136.4.1 – Exclusive Track Occupancy

Working limits may be established on controlled tracks by use of Exclusive Track Occupancy. Exclusive Track Occupancy is issued by the train dispatcher or control operator in the form of a:

1. Track and Time Authority
2. Track Permit
3. Track warrant
4. Work and Time Authority
5. Foul Time
6. Form B Track Bulletin
7. Track Out-of-Service Bulletin (Form C)

* * *

Claimant acknowledged that their gang's vehicle was fouling Main Track 1. This meant from a standpoint of safety that the part of track occupied by the vehicle had to be "controlled track," meaning a segment of track where train movements are authorized by a designated authority, such as a Dispatcher or Control Operator, and where trains can only operate after receiving specific permission from the designated authority. Otherwise the vehicle would be in danger of being struck by a train. Rule 136.4.1 lists seven means by which working limits may be established on controlled tracks. At the investigative hearing the Claimant's welding partner was asked, "Did he [the Track Inspector] tell you specifically what track was out of service?" He answered, "No, he didn't specify – he did not." (Tr. 45). In the Board's opinion, without definitive knowledge that Main Track 1 was out of service in the area where they were working, but aware that their team's vehicle was fouling Main Track 1, basic

safe procedure required that Claimant and his welding partner take steps to assure that they had exclusive track occupancy for the portion of Main Track 1 being fouled by their vehicle.

The evidence thus backs up the correctness of Claimant's welding partner's statement that he was at fault, that he should have double-checked the protection. In the Claimant's testimony at the investigative hearing, he never testified that the Track Inspector said that Main Track 1 was out of service. In response to questions by the representative of the Organization he testified that at no time did he have a conversation with the Track Inspector, that all communications were between his welding partner and the Track Inspector. (Tr. 72) He acknowledged that he knows how to obtain different kinds of on-track protection but stated that as between him and his welding partner, his welding partner normally picks up track protection. Since the Claimant, like his welding partner, had not been told that Main Track 1 was out of service, safety dictated for him, no less than for his welding partner, that inquiry be made whether exclusive track occupancy had been obtained for the portion of Main Track 1 being fouled by their team's vehicle. His failure to assure that this was done was incompatible with the requirements of Rule 136.4.1, and he was properly found culpable for violation of that rule. Private agreements or arrangements between the Claimant and his welding partner cannot absolve him of the obligation to comply with all applicable company rules. None of the decisions relied on by the Organization in support of its position involved a claimant who was exonerated of a rules-violation on the basis that he (or she) properly relied on what a fellow gang-member in the same classification working alongside him (or her) told him (or her), although the said gang-member himself (or herself) was found culpable for relying on that same information.

The foregoing being said, the Board is nevertheless of the opinion that there are strong mitigating circumstances present in this matter. The Track Inspector was the EIC for the track repair assignment here in issue. It is he who provided on-track safety for Claimant and his welding partner for the track repair assignment on the crossover track at Alazon here in issue. By his own testimony it was also he who released the crossover track back to service when the work was finished. (Tr. 67) Plainly he was the EIC on the job from beginning to end. Moreover, the evidence shows that the Track Inspector was aware that the repair job required that not only the crossover track but also Main Track 1 be taken out of service. Thus the Track Inspector testified that he called Dispatch, informed them of the broken rail at the crossover, and stated, "I want to take the whole entire Main 1 out of service." The Dispatcher, he stated, said not to take the whole thing out of service because of westbound traffic and "all you gotta do is state the crossover's out of service and that's what we did." (Tr. 63-64).

The foregoing testimony indicates a conscious decision by the EIC Track Inspector, after speaking with the Dispatcher, not to take Main Track 1 out of service. That would explain why the Track Inspector, as he admitted in his written statement, told the Claimant and his welding partner that as soon as they get to Alazon they can start working on the broken rail. This conclusion is also supported by the fact that, in an attempt to explain why he did not tell them that they had to pick up their own track protection, he gave two different reasons, neither of which holds up to scrutiny. First he stated, "I did not because, like I said, I had a – traffic right behind me and Dispatch wanted me to get out right of way, so I just went on my way." (Tr. 68)

Obviously his answer does not explain why he did not notify Claimant and his partner immediately after he got out of the way of the train traffic behind him. A little later in his testimony he stated, “. . . I thought they . . . know how to protect themselves . . .” (Tr. 70). That answer raises the question of why, then, he took the crossover track out of service. If the Claimant and his co-welder could protect themselves with respect to the Main Track, surely they could also do so for the crossover track. In addition, as the EIC for the repair job in question, it would appear that the Track Inspector had primary responsibility for obtaining exclusive track occupancy not only for the crossover track but also for Main Track 1. In this connection it should be noted that the Claimant’s welding partner did **not** write in his statement that he was aware that he should have obtained protection for Main Track 1. Rather, he stated that he “should have double-checked the protection,” implying that the primary responsibility for obtaining the protection lay elsewhere, namely, with the EIC.

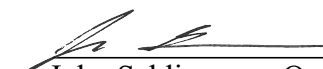
The evidence indicates that the EIC in charge of the rail repair job at Alazon here in issue made a conscious determination that on-track protection should not be secured for Main Track 1 and therefore neither obtained such protection on his own or informed the Claimant that he should do so. This is a strong mitigating factor and makes dismissal in this case excessive discipline for the violation found. However, it does not exonerate Claimant since, knowing that his gang’s vehicle was fouling Main Track 1 and not being informed by the EIC that he had on-track protection for that track, he should have made appropriate inquiry whether that track was protected before beginning work on his track repair assignment. The Board is of the opinion that the appropriate remedy in this case is reinstatement without loss of seniority for time off work but no back pay. The Claimant shall have his health benefits and other benefits restored retroactively. The Claimant, upon reinstatement, shall be placed in MAPS Training 2 status with a retention period of 24 months.

A W A R D

Claim sustained in part. The Carrier is directed to comply with this Award within 30 days of the date that any two members of the Board affix their signature to the Award.

<u>/s/ Sinclair Kossoff</u>	<u>9/15/2025</u>
Sinclair Kossoff, Neutral Member	Date

<u>Jennifer McNeil</u>	<u>October 6, 2025</u>
Jennifer McNeil, Carrier Member	Date

<u></u>	<u>October 6, 2025</u>
John Schlismann, Organization Member	Date