

PUBLIC LAW BOARD NO. 7660  
AWARD NO. 47

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s dismissal of Mr. W. Noyes, by letter dated August 5, 2014, for alleged violation of General Code of Operating Rules (GCOR) Rule 1.6 Conduct (1) Careless and the part that reads, ‘...*“Any act of hostility, misconduct or wilful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated,”...*’, (Emphasis in original) (Employees’ Exhibit ‘A-1’) GCOR 70.3 Job Briefing, Safety Rule 74.6.2 Back-Up Move on Rail and Maintenance of Way Rule 42.2.2 Other Speed Requirements, in connection with allegations that he failed to stop in half the range of vision and struck another company vehicle causing damage to both vehicles and injuries to three (3) Carrier employees was without just and sufficient cause, unwarranted and in violation of the Agreement (System File M-1448U-403/1623457 UPS).

2. As a consequence of the violation referred to in Part 1 above, the Carrier shall immediately reinstate Claimant W. Noyes to service with all rights and benefits unimpaired, expunge the Level 5 discipline from his record, compensate him for all loss suffered in connection with the inappropriate discipline and provide all other relief outlined in the Organization’s initial letter of claim dated October 1, 2014. (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, a Track Arc Welder with 5 1/2 years of service, was issued a Notice of Investigation (NOI) dated June 18, 2014 on charges that he was careless of safety of himself and others on June 12, 2014 when he failed to stop in half the range of vision and struck another vehicle, causing vehicle damage to both vehicles and injuries to 3 employees. An Investigation was conducted on July 24, 2014, and a Notice of Discipline was issued on August 5, 2014, finding Claimant guilty of the charges in violation of GCOR Rule 1.6 Conduct (1) Careless of Safety, Rule 70.3 Job Briefing, Rule 74.6.2 Back-Up Moves on Rail, and Safety Rule 42.2.2 Other Speed Requirements, and assessing him a Level 5 dismissal. The instant appeal resulted.

The Investigation revealed that on June 12, 2014, Claimant was part of a 5 man crew assigned to change a rail in an area with a Form B on both tracks. The crew was operating a section truck and a welding truck. It was decided to do the job by hy-railing to location. The section truck proceeded forward on the track first, with 3 employees. Claimant was the driver of the welding truck that was to proceed second, backing down the track to enable the crew to utilize the vehicles on either side of the rail that needed to be changed. All involved testified that they had a sufficient job briefing to know what they had to do, but that it could have been a better one. After the section truck reached the red board, it stopped, and the Foreman radioed this fact. He was immediately contacted by the EIC of the Form B, and did not receive an acknowledgement of his message from Claimant.

Claimant testified that he did not hear the call out that the section truck was stopped. He acknowledged being trained in, and operating, this equipment previously. He stated that he could see the section truck when he started his backward move down the track, but that, at the curve he lost sight of it, for a moment the sun glared through the windshield, he lifted his foot off the accelerator, but did not realize the distance of the truck stopped ahead of him. There is no dispute that he backed the welding truck into the section truck, which propelled it forward about 15 feet, that 3 employees sustained injuries as a result of the collision, and there was approximately \$4000 in property damage. Claimant accepted responsibility for his mistake, indicating that he was complacent and did not put safety first.

Carrier argues that Claimant was provided a fair and impartial hearing, and that his admissions that he operated the welding truck unsafely, and failed to stop his vehicle in half the distance the track is seen to be clear, provide more than substantial evidence that he violated Rules 1.6 (1), 74.6.2 and 42.2.2. It also asserts that the evidence establishes that Claimant and the rest of his crew did not perform an adequate job briefing in violation of Rule 70.3. Carrier maintains that, since Claimant had a previous Rule 1.13 violation six months earlier resulting in a Level 3 discipline, the Level 5 dismissal was an appropriate penalty for his being careless of safety, resulting in personal injury and property damage. The Organization contends that Claimant should have been offered SAP in this case, since he attempted to mitigate his carelessness by removing his foot from the accelerator when he was unable to see the track in front of him. It takes issue with the harshness of the penalty, considering that Claimant accepted responsibility and learned from the experience.

On the basis of the entire record, the Board concludes that Claimant received a fair and impartial hearing, and that Carrier sustained its burden of proving that Claimant was guilty of the charges by substantial evidence. There is no dispute that Claimant was Careless of Safety, and that his failing to stop his vehicle in half the distance the track is

seen to be clear, a rule he had been trained in and understood, was the cause of the collision, injury to three co-workers, and property damage. Under the circumstances of these serious safety violations, which are dismissible events under its UPGRADE policy, Carrier is not required to offer Claimant the ability to participate in SAP. Its failure to do so is neither arbitrary, capricious nor unreasonable.

AWARD:

The claim is denied.

*Margo R. Newman*

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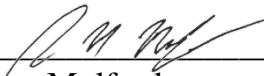
Margo R. Newman  
Neutral Chairperson

Dated: December 9, 2017



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K. N. Novak  
Carrier Member



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Andrew Mulford  
Employee Member