

**PUBLIC LAW BOARD NO. 7660**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION - IBT**

**and**

**UNION PACIFIC RAILROAD COMPANY  
[SOUTHERN PACIFIC TRANSPORTATION COMPANY  
(WESTERN LINES)]**

**Case No: 91  
Award No: 91**

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (MAPS Training 1) of Mr. F. Jones by letter dated May 31, 2016 for alleged violation of Rule 135.1.2: When To Use Lockout/Tagout, Rule 135.2.3: Apply and Remove Your Own Locks, Wire Ties, and Tags and Rule 135.3.2: Lockout/Tagout Procedures was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File T-1645S-904/1666330 SPW).

2. As a consequence of the violation referred to in Part 1 above, Claimant F. Jones shall have his MAPS Training 1 '... expunged from his personal record. Claimant be immediately compensated for any and all wages lost, straight time and overtime due to his time spent traveling and participating in the stated hearing.'"

**FINDINGS:**

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the Brotherhood of Maintenance Employees Division – IBT (hereinafter referred to as the "Organization") and the Union Pacific Railroad Company (hereinafter referred to as the "Carrier"). Upon the whole record, a hearing, and all evidence as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing thereon. The Claimant was ably represented by the Organization.

The Carrier has employed the Claimant, Fred Jones, for approximately 13 years. The Claimant held a Ballast Regulator Operator position when on May 3, 2016, he allegedly failed to properly follow lockout/tagout safety procedures when performing maintenance on his machine. On May 13, 2016, he was notified in writing by the Carrier to report for a hearing and investigation, which was held on May 23, 2016. On May 31, 2016, the Claimant was notified that the Carrier found him guilty of the charges and that he was to receive training under the Carrier's Policy for Managing Agreement Professionals for Success "MAPS Training 1". The record indicates that the Carrier denied subsequent appeals by the Organization and rendered its final decision on November 15, 2016. An appeal conference was held on June 27, 2017 to discuss the matter and there was no change in the Carrier's decision. The Organization rejected the Carrier's decision and moved to have the matter adjudicated before this Board.

The Carrier maintains that the Board should not address the merits of the claim since the Organization committed a procedural error when it did not properly submit its appeal of the discipline to the Carrier representative who issued the decision. It alleges that the Organization failed to send its written appeal to the General Superintendent of Transportation Services Roger Lambeth, Jr., who issued the Notification of Discipline Assessed. The Carrier asserts that Rule 44(a)(2) requires that "the matter shall be considered closed" by the Board since the Organization's appeal was not sent to Lambeth.

The Carrier claims that it has established with substantial evidence that the Claimant violated several provisions of Rule 135 on May 3, 2016 when he was observed by his supervisor and foreman making repairs on his equipment prior to locking it and tagging it out as required. It argues that the witnesses' testimony, as well as that of the Claimant, confirms he did not follow proper safety procedure.

The Organization claims that the Carrier failed to provide the Claimant with a fair and impartial investigation. It maintains that the hearing officer exhibited a bias toward the Claimant during the hearing and denied him the opportunity to enter into evidence an Equal Employment Opportunity ("EEO") report.

The Organization contends that the Carrier has not met its burden of proof that the Claimant violated Rule 135. It argues that the Carrier ignored the Claimant's credible testimony that he was in the process of securing his machine but had not yet reached the lockout/tagout stage when his supervisor confronted him. The Organization maintains that both the foreman and supervisor provided conflicting and inconsistent testimony regarding what they observed and their interaction with the Claimant.

The Organization avers that the Claimant has an unblemished record after 13 years of service and is always in compliance with safety and operational procedures. It argues that the MAPS 1 Training is unwarranted.

We first address the procedural objections made by each party and find that none are fatal flaws that prevent us from addressing the merits of the claim. The Carrier's claim that the Organization violated Rule 44 (a)(2) by not responding to Lambeth, who issued the notice of discipline, is not a fatal flaw that requires dismissal of the claim. A distinction can be made between a curable error, as determined by the facts in the record as to whom the appeal was sent, and the time limits found in Rule 44, which if violated, cannot be corrected. The rule, in pertinent part reads:

(2) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier will be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter will be considered closed, . . .

A reading of the provision cited above indicates that the subject of the section is the 60-day time limit. The issue addressed is that the appeal must be forwarded "within that time".

The Board is not deciding here that the appeal should not be sent to the Carrier official who issued the notice of discipline. However, here the Carrier never objected during the on-property handling of the dispute that the Organization made its initial appeal to the Engineering Supervisor Bill Ince instead of Lambeth. The Carrier's response to the Organization, dated August 11, 2016, was written by Ince who does not object or address the issue, and therefore indicates that the Carrier accepted the appeal as valid and deprives

the Organization to address the objection within the applicable time period. Nor does Lambeth write that he did not receive a timely reply. Instead, the Carrier responds to all of the Organization's appeals without objection to the initial appeal going to Ince. As such we find that the Organization met its obligation within the spirit of the provision when it appealed the Carrier's decision to Mr. Ince.

The Organization's claim that the Carrier's hearing officer failed to provide the Claimant with a fair and impartial hearing is unsupported by the record. The hearing officer exercised his judgment without bias when he refused to enter the Claimant's EEO complaint. The hearing officer's decision was based on the conclusion that the document was irrelevant to the charges and was not evidence that proved or disproved any of the facts being asserted regarding the events of May 3, 2016. Moreover, a complaint alone is not a conclusive finding that bias has occurred. The Board does not find any other procedural defects that require dismissal of the charges.

In discipline cases, as the one before the Board here, the burden of proof is upon the Carrier to prove its case with substantial evidence and, where it does establish such evidence, that the penalty imposed is not an abuse of discretion. Upon review of all the evidence adduced during the on-property investigation, the Board here finds that the record contains credible and reliable evidence that the Claimant violated Rule 135 when he failed to follow the proper lockout/tag out procedures.

Despite conflicting testimony by the Carrier's witnesses as to the sequence of events when they observed the Claimant with his equipment and who spoke to him first, the Claimant's own testimony constitutes substantial evidence that he violated the applicable rules. Rule 135.1.2 states that employees must follow lockout/tagout anytime they "Perform service, maintenance, adjustments, or repairs on equipment." The Claimant testified, "There was- there was an adjustment being made on the- on the broom. That was before I did the lockout/tagout process." The Claimant acknowledges that he was making an "adjustment" before he applied the safety procedure, which is detailed in Rule 135.3.2.

The Carrier was not arbitrary in its conclusion that the Claimant was not adhering to

the rule as written or in its decision to take corrective action. The level of discipline is not excessive in that, having found that the Claimant was guilty of the charges, the Carrier followed its MAPS Policy in sending him to training.

It is well established in the industry that leniency is reserved to the Carrier where there is no abuse of discretion. The record does not contain any evidence that the Carrier was biased or prejudiced in requiring that the Claimant undergo MAPS Training 1. Despite the Organization's valiant efforts in urging the Board to dismiss the charges, the Carrier has an obligation and the discretion to address offenses that endanger employees. The penalty imposed by the Carrier is not arbitrary, capricious or an abuse of discretion and therefore, in accordance with ample arbitral precedent, the Board will not alter the discipline imposed.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Carrier has established with substantial evidence that the Claimant violated its rules when he failed to follow the proper lockout/tagout procedures on his equipment on May 3, 2016.

**AWARD**

Claim denied.



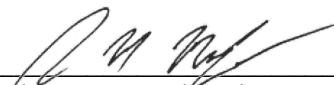
Michael Capone  
Neutral Member

Dated: May 14, 2018



Alyssa K. Borden  
Carrier Member

Dated: 05/16/18



Andrew M. Mulford  
Labor Member

Dated: 5/16/18