

PUBLIC LAW BOARD NO. 7766

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

New Orleans Public Belt Railroad

Award No. 3

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline [fifteen (15) day actual suspension and fifteen (15) day overhead suspension] of Mr. T. Norah, by letter dated July 18, 2018, for violation of NOPB Safety & Operating Rule General Regulation 5 (GR-5) was based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File O78100316 NOP).
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall remove all associated charges and discipline from Claimant T. Norah’s record and make him whole for all losses.”

FINDINGS:

Public Law Board No. 7766, upon the whole record and all the evidence, finds the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction of the dispute herein; the parties were given due notice of hearing before this Board and they participated therein.

The Claimant was disciplined pursuant to a Notice of Investigation dated June 1, 2016, Investigation held June 21, 2016, “to ascertain the facts and determine your responsibility, if any, in connection with your failure of following Rule GR-5 which requires you to report for duty at the designated time and place on May 28th and 29th, 2016. You failed to protect your employment on the aforementioned dates.”

In a discipline letter dated July 18, 2016, the Carrier found that “*there was relevant evidence to support the conclusion that Mr. Norah was guilty of violating the following Company*

*Rules: General Regulation 5 (GR-5) of the NOPB Safety & Operating Rules effective October 1, 2014. Specifically, I believe Mr. Norah failed to show up for work on May 28 and May 29, 2016 without proper authority. Mr. Norah's actions fall under the Rule 10(b) of the agreement between the New Orleans Public Belt Railroad and its employees represented by the Brotherhood of Maintenance of Way Employees dated January 1, 2015. Due to Mr. Norah being an hourly rate employee who absented himself from his duties for more than one (1) day without having first obtained informal leave of absence from his immediate superior, he is subject to discipline. Secondly, the project for that weekend was closely organized and scheduled to meet a very critical timeline of the Port of New Orleans since the work required the complete shutdown of the Clarence Henry Truckway, the Port's main road in and out of the terminal. Mr. Norah's unexcused absence put unnecessary burdens on his fellow workers and the NOPB to meet its commitment to the Port of New Orleans. Based on the record and after weighing the credibility of those who testified, I believe there was sufficient evidence to support the conclusion that Mr. Norah is guilty of the charge as described above. The actions of Mr. Norah constitute a serious offense. Discipline for not protecting one's assigned work cannot be properly addressed through classroom training or field training. Accordingly, the discipline assessed is fifteen (15) days suspension without pay and fifteen (15) days held in abeyance for 6 months effective July 25, 2016."*

The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties' respective positions, whether or not specifically addressed herein.

The Board finds the Organization's procedural objections unpersuasive.

There is substantial evidence in the record to uphold the Carrier's discipline determination. The Organization's defenses are not persuasive. The discipline assessed by the Carrier was not arbitrary, capricious, or an abuse of discretion under the facts and circumstances of this record, and will therefore not be disturbed by this Board.

AWARD:

Claim denied.

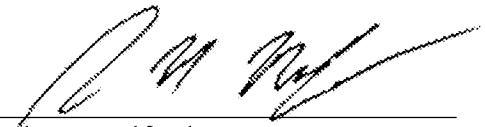


Robert Grey  
Neutral Member

Dated: March 22, 2018



Erica Beck  
Carrier Member



Andrew Mulford  
Labor Member