

PUBLIC LAW BOARD NO. 7766

Brotherhood of Maintenance
of Way Employees Division - IBT

and

New Orleans Public Belt Railroad

Award No. 4

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s imposition of discipline in the form of a fifteen (15) day actual suspension, one (1) day of class room training followed by two (2) days of field training upon Mr. J. Reed by letter dated December 21, 2016, for violation of NOPB Safety and Operating Rules SR-97 and SR-98 was based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File NOPB503JF17 NOP).
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall remove the charges and discipline from Claimant J. Reed’s record, pay him for all time lost and afford him all other rights and benefits.”

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 October 31, 2016, Investigation held November 22, 2016, “to ascertain the facts and determine your responsibility, if any, in connection with your alleged failure to comply with the NOPB Safety and Operating Rules with respect to an incident that occurred on Monday, October 24, 2016, at approximately 1500 hours at 940 Central Avenue, Metairie LA, 70111, involving a gang truck that backed into a trailer. As the foreman of the crew, it is alleged that you were responsible for ensuring that the job

was performed safely and properly and ensuring that the driver had a second person to guide the movement while backing up in accordance with NOPB Safety & Operating Rule SR-97 and 98.”

In a discipline letter dated December 21, 2016, the Carrier found that *“there was relevant evidence to support the conclusion that Mr. Reed was guilty of violating the following NOPB Safety and Operating Rule: SR-97 and SR-98. Specifically, SR-97 requires employees to “limit any backing to only the necessary distance when you are backing up and the rear vision is obstructed...a second person when available must take position near the rear of the vehicle to guide the movement.” SR-98 provides that “vehicle drivers are responsible for the safe and proper operations of the vehicle, and they’re in charge for the safety of their occupants.” As foreman of the job, it was Mr. Reed’s responsibility to keep the crew safe and ensure that proper procedures were used when backing up, and he failed to fulfill these responsibilities. Transcript of the Investigation, page 29. Based on the record, sufficient evidence exists to support the conclusion that Mr. Reed was guilty of the charge described above. The actions of Mr. Reed constitute a serious offense. Mr. Reed also has previous discipline of 15 days held in abeyance for six months effective July 25, 2015 arising from a prior incident. Discipline Assessment dated July 18, 2016. Accordingly, I hereby assess discipline of fifteen (15) day suspension and three (3) additional days of discipline by receiving one (1) day of classroom training followed by two (2) days of field training. The suspension will begin effective January 1, 2017, and the training will commence immediately upon return from the suspension. The employee must coordinate his return to work with the Director of Human Resources no later than Wednesday, January 11, 2017.”*

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 Carrier met its burden of proof regarding Safety and Operating Rule SR-97, but not regarding

Rule SR-98. The Organization's remaining defenses are not persuasive. Notwithstanding the above, 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:

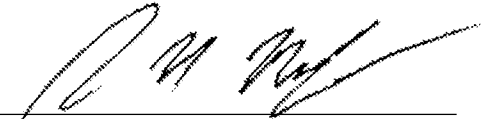
Claim sustained in accordance with the Findings.



Robert Grey
Neutral Member
Dated: March 22, 2018



Erica Beck
Carrier Member



Andrew Mulford
Labor Member