

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 128
UNION PACIFIC RAILROAD COMPANY) Award No.104
_____)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
B. W. Hanquist, Carrier Member

STATEMENT OF CLAIM:

1. The Level 4C UPGRADE discipline assessment (120 day suspension) to Mr. T. A. Horstman for an alleged violation of Union Pacific Rule 8.3 (Main Track Switches) was not justified
2. As a consequence of the violation outlined in Part (1) above, the Claimant shall have the removal of charges and the assessment of discipline from his record and for him to be paid for all lost time account the Carrier failed to meet their burden of proof.

Public Law Board No. 6402 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On September 13, 2007, Claimant was notified to report for a formal investigation on September 19, 2007, concerning his alleged failure to ensure that the main line switch was properly lined and locked on August 18, 2007. The hearing was postponed to and held on September 27, 2007. On October 16, 2007, Claimant was advised that he had been found guilty of the charge and had been assessed discipline at UPGRADE Level 4C, a 120-day suspension.

The Organization contends that Carrier did not afford Claimant a fair and impartial hearing because it conducted a joint hearing with Claimant and the Hoisting Engineer. We do

not agree. Both employees were investigated for their responsibility in the same incident and the evidence against each employee was the same. We have scoured the record and we fail to find any evidence admitted against one of the employees that prejudiced the rights of the other. There is no prohibition in the Agreement of joint investigations and we see no way in which Claimant's rights were prejudiced by the procedure. We conclude that Carrier afforded Claimant a fair and impartial investigation.

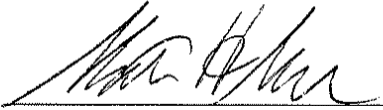
The record reflects that on August 18, 2007, Claimant was the Foreman and Employee-in-Charge, working on a bridge replacement at Bridge 0.93 on the Lockhart Subdivision near Smithville, Texas. At around 5:00 p.m., as the Form B was expiring, the Hoisting Engineer tied up an MP65 crane at an industry track just off the main line. The Assistant Hoisting Engineer lined the switch for the industry track so the Hoisting Engineer could move the crane. The switch was not relined for the main track and was not locked. Early the following morning, a train on the main line ran through the switch. The Assistant Hoisting Engineer admitted his responsibility for failing to line the switch back to the main line and failing to lock it and accepted the Level 4C discipline.

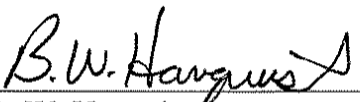
Claimant testified that he observed that the crane was on the spur track and in the clear and assumed that the switch was lined properly for the main line track and locked. He picked up the Form B flags and allowed the Form B to expire at 5:00 p.m. but did not check to confirm that the switch had been lined and locked. Claimant admitted that he violated the rule. We hold that Carrier proved the charge by substantial evidence.

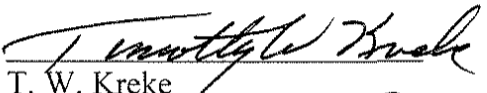
The Organization objects to the severity of the penalty. Our role in reviewing the penalty is very limited. We are not authorized to disturb the penalty merely because we would have imposed a lesser penalty had we made the decision to discipline. We only review the penalty to determine whether it was arbitrary, capricious or excessive. We note that failure to properly line and lock a switch in dark territory can have severe consequences for safety. We further note that the penalty was in accordance with Carriers UPGRADE progressive discipline policy. We are unable to say that the penalty imposed was arbitrary, capricious or excessive.

AWARD

Claim denied.


Martin H. Malin, Chairman


B. W. Hanquist
Carrier Member
Sept 17, 2008


T. W. Kreke
Employee Member
Sept 17, 2008

Dated at Chicago, Illinois, August 31, 2008