

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 122
UNION PACIFIC RAILROAD COMPANY) Award No. 108
_____)

Hearing Date: April 22, 2008

Claim on behalf of Mr. Brad Dennis, so that charge letter dated March 19, 2007, to be removed from all company records and for the Union Pacific Railroad Company to compensate him for any loss of time, all vacation rights, including all his seniority rights unimpaired, on account the Union Pacific Railroad Company has disciplined the employee with a Level 4 (30 day suspension) starting March 19, 2007 to April 18, 2007, for allegedly being charged for possible violation of CEB 136.3 (Job Briefings) and CEB 121.2.4 (Procedures for Clearing Trains), where it was alleged that, on January 23, 2007, he failed to know where your Roadway Protection was when asked for by the FRA Track Inspector, Mr. Stan Crocker. We are requesting that the charges be dropped because the carrier has failed to meet the burden of proof at the investigation held on February 28, 2007, in Palestine, Texas.

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 February 14, 2007, Claimant was notified to report for a formal investigation on February 20, 2007, concerning his alleged failure to know where his Roadway Worker Protection was when asked by the FRA Track Inspector on January 23, 2007. The hearing was postponed to and held on February 28, 2007. On March 19, 2007, Claimant was advised that he had been found guilty of the charge and had been assessed discipline at UPGRADE Level 4, a 30-day

suspension.


The record reflects that on January 23, 2007, an FRA Track Inspector reported that Claimant "was in the foul of Main 1 and had no information concerning on-track safety except to say that there was a form B in effect. He did not know the limits, tracks involved, with a stop or not. When asked if he attended job briefing he said he had, but he guessed he had not really paid attention." The Organization objects to the introduction of the Track Inspector's report because the Track Inspector did not testify. We do not agree. Carrier does not have subpoena power and could not compel the Track Inspector to appear as a witness. We find no error in the introduction of the report into evidence.

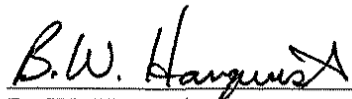
The Inspector's report was corroborated by testimony from the ARASA Supervisor who related that he questioned Claimant the following morning and Claimant stated that he had not paid attention at the job briefing. Furthermore, when questioned at the investigation about his knowledge on the day of the incident, Claimant was evasive. He was unable to give the limits of the Form B, stating merely, "I acknowledge and understood that I was under a Form B." When asked, "How do you prove you know where the limits are?", he replied, "Through the EIC." Claimant's own testimony and the testimony of the ARASA Supervisor corroborated the Track Inspector's report. We conclude that Carrier proved the charges by substantial evidence.

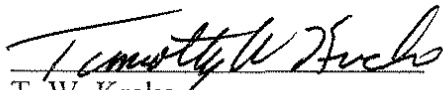
The penalty imposed was consistent with Carrier's UPGRADE policy. We cannot say that it was arbitrary, capricious or excessive.

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, September 8, 2008