

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

AWARD NO. 147, (Case No. 168)

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DIVISION - IBT RAIL CONFERENCE**

vs

**UNION PACIFIC RAILROAD COMPANY (Former Missouri Pacific
Railroad Company)**

William R. Miller, Chairman & Neutral Member

T. W. Kreke, Employee Member

B. W. Hanquist, Carrier Member

Hearing Date: August 18, 2010

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Level 3 discipline [five (5) day suspension] upon Track Foreman S. Currie for violation of GCOR Rules 1.13, 44.1 and 46.1 in connection with his alleged failure to comply with instructions and previous agreement to maintain quality and failure to do quality according to standards between Mile Posts 34.5 and 35 on the Hearne Subdivision on July 26, 2009 is based on unproven charges, unjust, unwarranted and excessive (System File UP-225-WF-09/1523154D).
2. As a consequence of the violation outlined in Part 1 above, 'We are now requesting that the charges be dropped and that Mr. Currie have his personal record cleared of all charges. Also that he be reinstated with all back pay, seniority and vacation rights unimpaired and all other rights due to him by the collective bargaining agreement.' (Employees' Exhibit 'A-3')."

FINDINGS:

Public Law Board No. 6402, upon the whole record and all 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 August 6, 2009, Carrier notified Claimant to appear for a formal Investigation on August 13, 2009, which was mutually postponed and subsequently held on September 28, 2009, concerning in pertinent part the following charge:

"...to develop the facts and place responsibility, if any, that while employed as Foreman, on Gang 9167, on July 26, 2009, you allegedly failed to comply with instructions and previous agreement to maintain quality in the Gang and your failure to do quality according to standards between Milepost 34.5 and Milepost 35, on the Hearne Subdivision.

These allegations, if substantiated, would constitute a violation of Rule 1.13 (Reporting & Complying with Instructions), Rule 44.1 (Work Standards), and Rule 46.1 (General Requirements), as contained in the General Code of Operating Rules, effective April 3, 2005, and in the Maintenance-of-Way Rules, effective November 17, 2008. Please be advised that if you are found to be in violation of this alleged charge the discipline assessment may be a Level 3, and under the Carrier's UPGRADE Discipline Policy may result in up to five (5) days off work without pay or up to one (1) day training without pay and a Corrective Action Plan must be developed prior to returning to service."

On October 15, 2009, Claimant was notified that he had been found guilty as charged and his record was assessed with a Level 3 UPGRADE discipline and a five day suspension.

The undisputed facts are that Claimant has a service date with the Carrier of April 14, 1976, and a seniority date as a Track Foreman of January 30, 1978 and was assigned to that position on Gang 9167 on the date of the incident. On July 26, 2009, Claimant was assigned and working as one of several foremen on Tie Gang 9167. Tie Gangs are customarily large mechanized gangs whose main duties include the replacement of large numbers of deteriorated sub-standard crossties. As part of an overall tie replacement project, a group of tie gang employees are customarily assigned to perform follow-up Quality Control (QC) work behind the main consist of the tie gang. QC duties include correcting rail anchor and spike patterns, repositioning skewed tie plates, removing/replacing bent spikes, raising/tamping low crossties, removing/replacing spikes with heads not properly positioned, etc., which were not corrected or were overlooked by the main consist of the tie gang at the time the crossties were initially replaced. On the date in question, the Claimant and one ground employee were assigned by Tie Gang Supervisor S. Mills to perform QC duties behind the main consist of Tie Gang 9167.

It is the Organization's position that Claimant has 33 years of unblemished service. The Organization argued that the photographs submitted during the Investigation do not confirm whether they were actually taken at the work site in dispute and the work plan that the Claimant submitted for QC work was for a different site. It further argued that any problems found by Manager Track Programs G. Noll and Supervisor Mills were not marked by either. Nonetheless, Claimant returned to work area and corrected all problems he found. Lastly, it argued that in support of his work ethic, fairness and quality of leadership, in his closing statement at the Hearing the Claimant read from a letter provided by and signed by no less than 20 members of Gang 9167 who worked under his charge during the tie renewal project on the Hearne

Subdivision who attested to his dedication to do a good job. It concluded by requesting that the discipline be set aside and the Claim be sustained as presented.

It is the position of the Carrier that on July 26, 2009, while working on the track, between Mile Posts 34.5 and 35 on the Hearne Subdivision Claimant's Supervisor Mills noticed the track that Claimant was responsible for working on that day was not repaired to standard as he had been instructed to do. Prior to this event, Claimant had specific discussions with his Supervisor concerning his lack of quality towards the work he was responsible for and Claimant had even made a written plan on how he intended on improving quality on his gang. According to the Carrier, those standards were not met by the Claimant's crew on July 26th. It closed by asking that the discipline not be disturbed and the Claim remain denied.

The Board has thoroughly reviewed the record and finds that Manager Noll and Supervisor Mills testified in the Hearing that they walked the track to inspect the quality of the work that had been performed by the Claimant's gang and that Claimant had been directed to mark and/or correct any exceptions found. During the Hearing photographs were entered attesting to the deficiencies of the section of track covered by the Notice of Investigation which Supervisor Noll stated were taken by him on July 26, 2009. Supervisor Mills also testified that he saw Noll take the photographs on July 26th. The Organization suggested that the pictures could have been from a different area, however, that argument is without substance as there was no reason shown why the aforementioned Supervisors would not have been forthright. Additionally, a review of the Claimant's closing statement substantiates that no less than four times during those remarks he confirmed he returned to the work site in dispute and corrected a variety of errors noted by Supervisors Noll and Mills. It is clear that the Carrier proved the charges with substantial evidence.

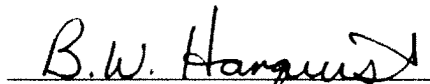
The only issue remaining is whether the discipline was appropriate. The record reveals that prior to the incident in dispute Claimant had been forewarned about deficiencies in his QC work, therefore, the discipline in this instance was in accordance with the Carrier's UPGRADE Policy, and it will not be set aside because it was not arbitrary, excessive or capricious.

AWARD

Claim denied.



William R. Miller, Chairman


B. W. Hanquist, Carrier Member
T. W. Kreke, Employee Member

Award Date: Nov 1, 2010