

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 99
UNION PACIFIC RAILROAD COMPANY) Award No. 89
_____)

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

Hearing Date: January 7, 2008

STATEMENT OF CLAIM:

- (1) The discipline of UPGRADE Level 2 (one [1] day of alternate assignment to develop a Corrective Action Plan) imposed upon D. R. Kolesar for an alleged violation of Union Pacific Rule 1.13 in connection with his alleged failure to comply with instructions when on the date of April 5, 2006, he ran out of fuel for the pile hammer, resulting in delays to the project and overrunning the track time granted was unwarranted, arbitrary and of the basis of unproven charges.
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant's record shall be cleared of the charges leveled against him.

FINDINGS:

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 April 13, 2006, Carrier notified Claimant of a Discipline Offer, of an UPGRADE Level 2 discipline because on April 5, 2006, he ran allegedly ran out of fuel for the pile hammer, in possible violation of Rule 1.13. Claimant rejected the offer and on May 5, 2006, Carrier notified Claimant to report for a formal investigation on May 15, 2006, concerning the charges referenced in the Discipline Offer. Following two postponements, the hearing was held on June 2, 2006. On June 20, 2006, Carrier notified Claimant that he had been found guilty of the charge and assessed discipline at UPGRADE Level 2, one day of alternate assignment to develop a

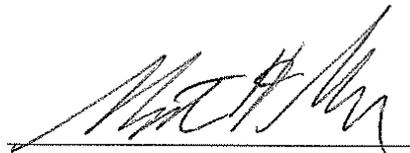
corrective action plan.

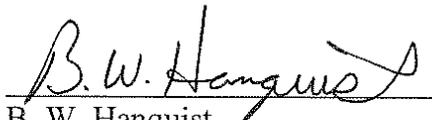
The record reflects that on April 5, 2006, Claimant was assigned to operate the pile hammer on the Lafayette Subdivision. Claimant's supervisor instructed all of the equipment operators to fuel their equipment in the morning so that they would not run out of fuel during the day. On April 5, Claimant did not fuel the pile hammer because he believed he had enough fuel in the machine to make it through the day. Toward the end of the day, Claimant ran out of fuel. There is no question that Carrier proved the charge by substantial evidence.

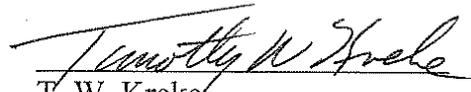
The penalty assessed was in keeping with Carrier's UPGRADE policy. We cannot say that it was arbitrary, capricious or excessive.

AWARD

Claim denied.


Martin H. Malin, Chairman


B. W. Hanquist
Carrier Member

 4-22-08
T. W. Kreke
Employee Member

Dated at Chicago, Illinois, April 17, 2008