

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 112
UNION PACIFIC RAILROAD COMPANY) Award No. 91
_____)

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

Hearing Date: January 7, 2008

STATEMENT OF CLAIM:

Claim on behalf of Work Equipment Mechanic J. R. Shearin for the removal of the alleged violation of Rule 1.13 (Reporting and Complying with Instructions), and the removal of the Claimant's assessment of a Level 3 Discipline and the removal of the unjustified and unwarranted five (5) day suspension and to be paid eleven (11) hours a day, a total of fifty-five (55) hours at his respective straight time rate of pay, which will begin on March 23, 2006, through and including May 27, 2006 and twelve (12) days of Per diem at the rate of \$57.00 a day for a total of \$684.00, beginning on May 16, 2006 through May 27, 2006, and all time lost to be credited to Railroad Retirement, vacation, hospitalization and all seniority unimpaired, all expenses to be paid for the Claimant attending the investigation on April 12, 2006, account the Carrier failed to produce sufficient evidence to support their charges for the before mentioned alleged rule violations.

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 3 2006, Carrier notified Claimant to report for a formal investigation on April 10, 2006, concerning his alleged failure to turn in Visa logs within the 30, 60 and 90 days period as specified in the Union Pacific Visa Policy Manual in violation of Rule 1.13. The hearing was held as scheduled. On April 26, 2006, Carrier advised Claimant that he had been found guilty of

the charge. A Rule 1.13 violation called for discipline at UPGRADE Level 2, but because Claimant had a prior Level 2 discipline assessment within the prior twelve months, his discipline was assessed at Level 3, a five day suspension.

The Organization has raised a number of procedural arguments. We have considered all of them. None require any discussion beyond observing that none of the objections raised by the Organization, singularly or in combination, provide a basis for upsetting the discipline.

The record reflects that Claimant, in his position as Equipment Mechanic, was issued a Visa credit card to make purchases necessary for him to perform his duties. All recipients of a Carrier purchasing credit card are required to maintain monthly transaction logs and receipts for purchases, and each month to reconcile the transaction log and receipts with the monthly bank statement and forward them to their managers. The record further reflects that Claimant failed to do so with respect to the statements for December 2005 and January and February 2006 until he was charged and directed to report for the investigation.

The Organization argues that there were no instructions setting express deadlines for submitting the reports. Carrier's Visa Purchasing Card Procedure Manual, however, expressly provides that if the log is not received 30 days after the bank statement date, a letter is sent to the cardholder and his manager; if the log is not received 60 days after the bank statement date, another letter is sent to the cardholder and his manager and if the log is not received 90 days after the bank statement date, the card is suspended. The manual further provides that the cardholder "must settle all errors on the statement within 60 days of the statement date."

Claimant testified that he was unaware of the deadlines and that he had never seen the manual. His testimony was belied by a receipt that he signed in which he acknowledged that he had read the manual and agreed to abide by its terms.

Claimant maintained that he had difficulty obtaining receipts from one particular vendor and that was why he was late in submitting his logs. However, Claimant also testified that he obtained the receipts in early April by physically going to the vendor's place of business and there is no evidence that Claimant could not have done this earlier and no evidence that he informed his manager of the difficulties he was having obtaining receipts. Considering all of the evidence in the record as a whole, we find that Carrier proved the charge by substantial evidence.

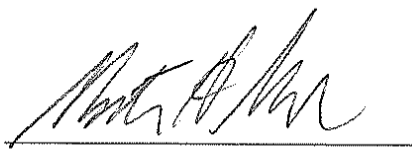
The penalty imposed was in keeping with Carrier's UPGRADE and was reasonable under the circumstances. However, it is clear that the discipline has served its purpose; indeed, it appears that the notice of investigation jolted Claimant into compliance and he submitted the tardy reports prior to the actual hearing. Under the circumstances, we shall award that Carrier remove the discipline from Claimant's record but Claimant is entitled to no compensation for lost wages or any other relief.

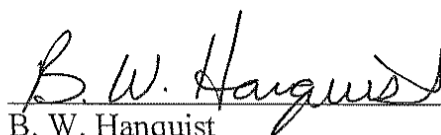
AWARD

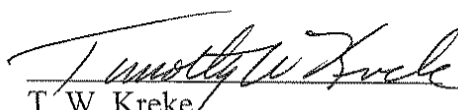
Claim sustained in accordance with the Findings.

ORDER

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto


Martin H. Malin, Chairman


B. W. Hanquist
Carrier Member

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

Dated at Chicago, Illinois, April 17, 2008