

BEFORE PUBLIC LAW BOARD NO. 6621

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

UNION PACIFIC RAILROAD COMPANY

Case No. 4

Statement of Claim: Claim of the System Committee of the Brotherhood that:

- (1) The Level 2 UPGRADE discipline assessment (one day of alternative assignment with pay to develop a corrective action plan) to Mr. J. M. Samaniego for an alleged violation of Agreement Rules 1 and 45 when the Carrier sustained a violation of Operating Rule 70.3 (Job Briefing) was not justified.
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be exonerated of all the above-mentioned charges, the Carrier's Level 2 discipline be expunged from his personal record.

The Relevant Rule:

Rule 70.3 Job Briefing

Use the Job Briefing process:

- Before work begins, when all persons, including employees and contractors, are present.
- After work begins, if persons(s) arrive who missed the original job briefing.
- When changes occur to the work plan or conditions change.

Each work plan must consider hazards, assign specific responsibilities, and explain those assignment.

Background

This is a companion case to Case No. 3 of this Board where employee R.M. Anderson, a Welder, had his finger severed while adjusting the wedges to set up for a field weld. Claimant J. M. Samaniego, the Welder Helper, was wielding the sledgehammer that struck Anderson's finger. On August 20, 2001, a Notice of Hearing was issued to Claimant, which stated:

On the morning of August 16, 2001, at approximately 9:20 a.m., you were working as a welder helper in Bakersfield near MP 311 on a crossing at 30th and M Street. While attempting to make a field weld, you allegedly failed to keep a safe distance from your welder and to have a proper job briefing as instructed by MTM Halte before beginning this task.

Following a hearing, a Notice of Discipline Letter was issued on December 6, 2001 in which Claimant was found guilty of violating Rule 70.3. Claimant was advised that his personal record was being assessed a Level 2 UPGRADE assessment of developing a corrective action plan to modify his behavior. (The Level 2 assessment is also a day of alternative assignment with pay to develop that plan.)

Positions of the Parties

The Carrier contends that Claimant was afforded all the elements of due process and a full, fair formal investigation. Additionally, the Carrier submits that the Record contains substantial, credible evidence to support the finding of guilt of the charges preferred.

The Organization asserts that the Carrier violated the Collective Bargaining Agreement by improperly assessing discipline against Claimant. In the Organization's view, the testimony in the Record demonstrates that both Claimant and R.M. Anderson

were in compliance with the rules regarding job briefing. Claimant corroborated Anderson's testimony denying any wrongdoing. He and Anderson were the only two employees present when the incident occurred. The Union contends that other witnesses at the hearing, specifically MTM George Halte and Manager Track Projects G. Thompson offered second-hand testimony. Inasmuch as neither observed the accident, the Organization argues that their testimony was hearsay and should not be relied upon to sustain the charges against Claimant.

Findings

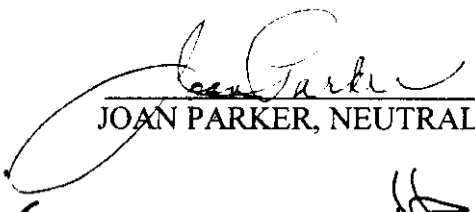
The credible evidence in the Record supports the conclusion that Claimant, like Anderson, paid insufficient attention to the job briefing process. In addition to the testimony of MTM Halte and Manager Track Projects Thompson, the Claimant himself indicated that he was in violation of the Safety Rule regarding job briefing. Specifically, Claimant admitted that he and Anderson did not discuss who would perform particular tasks because "[they] knew...that was [their] habit." (Tr. 61). Inasmuch as both Claimant and Anderson were experienced welders who had often worked together, they took certain safety measures for granted and admittedly did not consider all of the potential hazards of the job and what could be done to prevent injuries.

Given Claimant's admissions, as well as the testimony of Halte and Thompson, the Board finds that Claimant did not fully comply with the job briefing rule. This lapse of attention contributed to the serious accident which occurred and gave the Carrier proper cause to impose discipline. The Level 2 UPGRADE was a measured response and a

reasonable form of discipline that was corrective in nature. For the foregoing reasons, the claim is denied.

Award

The claim is denied.



JOAN PARKER, NEUTRAL MEMBER



CARRIER MEMBER

DATED: 6/30/03



ORGANIZATION MEMBER

DATED: 6-30-03