

BEFORE PUBLIC LAW BOARD NO. 6621

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

UNION PACIFIC RAILROAD COMPANY

Case No. 14

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

1. The discipline imposed upon Rene Cruz for an alleged violation of the Agreement Rule 1 and 48 when the Carrier sustained the charges of Union Pacific Rules 1.13 - Reporting and Complying with Instructions and 1.15 - Duty - Reporting or Absence when Claimant failed to report to his headquarter location at Fremont California on May 15, 2002. Subsequently thereto, Claimant was assessed a Level 2 under the Carrier's UPGRADE Policy.
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 and the Claimant be compensated for loss of wages on May 14, 2002.

Background:

Rene Cruz, a Truck Driver on Gang 8891, was charged with rule violations because he failed to report to his headquarter location in Fremont, California and failed to notify his supervisor, Dave Scherer, on May 15, 2002. Claimant had car problems that day as he was driving to the Fremont, California facility, and was given a ride by a fellow employee to a safety meeting in San Jose, California, for which Claimant was paid for the day. Following a hearing held on May 29, 2002, by letter dated July 1, 2002 the Carrier assessed Claimant with a Level 2 Discipline for violating two rules: (1) Rule 1.13 - Reporting and Complying with Instructions; and (2) Rule 1.15 - Duty - Reporting or Absence; which provide as follows:

Rule 1.13 - Reporting and Complying with Instructions
Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers or

various departments when the instructions apply to their duties.

Rule 1.15 - Duty - Reporting or Absence

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority.

Carrier's Position:

The Carrier asserts that because the Organization did not raise any procedural issues on the property, it may not do so on the instant appeal. Even if the Organization were permitted to raise procedural issues at this late stage, the Carrier claims that Claimant was afforded all of his due process rights under the Agreement.

On the merits, the Carrier contends that it provided ample proof that it previously had counseled Claimant with respect to how he should report lateness problems. In addition, the Carrier asserts that Claimant failed to report to the proper work location on May, 15, 2002 and also failed to notify his supervisor about his car problems that morning. Furthermore, the Carrier argues that the seriousness of Claimant's offense fully supports the Level 2 discipline imposed.

In response to the Organization's claim that Claimant should be reimbursed for being docked on May 14, 2002, the Carrier states that the Board has no jurisdiction over that claim because it is beyond the scope of the discipline challenged in the instant case.

Organization's Position:

The Organization claims that Claimant was instructed to go to the safety meeting at the San Jose facility on May 15, 2002, and the fact that he was paid for the day indicates that he properly reported there. In addition, the Organization contends that Claimant made appropriate attempts to contact his supervisor on May 15, 2002. The Organization also asserts that he should

be paid for May 14, 2003, when he was docked for the day despite the fact that he contacted his supervisor in a timely fashion that day.

Findings:

Rule 1.13 - Reporting and Complying With Instructions requires an employee to comply with his supervisor's instructions. Although Claimant's supervisor counseled him on two occasions shortly before the May 15, 2002 incident that he should call his supervisor's cell phone if he had problems getting to work, it is undisputed that Claimant failed to contact his supervisor on May 15, 2002 when his car broke down.

Rule 1.15 - Duty - Reporting or Absence requires an employee must report to work at the designated time and location. It is undisputed that, due to his car problems, Claimant reported to work at the San Jose safety meeting instead of at the Fremont headquarter location.

The Organization contends that because Claimant was paid for the safety meeting, he could not have committed a rule violation. That conclusion, however, does not necessarily follow. Claimant was supposed to report to work at the Fremont headquarters, and he failed to do so without notifying his supervisor. The Carrier's payment for Claimant's time spent at the safety meeting does not relate to his reporting and notification obligations.

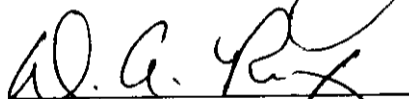
Accordingly, the Carrier has met its burden of proving the violations at issue. Moreover, the Level 2 Discipline is appropriate under the circumstances, particularly because Claimant was counseled regarding his reporting obligations on two occasions shortly before the May 15, 2002 incident. Claimant's request for pay reimbursement for May 14, 2002, for which he was docked, is denied because it does not relate to the discipline imposed for his rule infractions on May 15, 2002. To the extent that the Organization raised procedural issues not raised on the property, it

may not do so in the instant appeal.

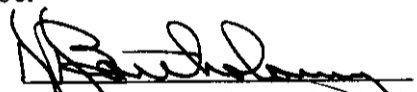
Award:

The claim is denied


JOAN PARKER, Neutral Member


CARRIER MEMBER

DATED: 7-16-03


ORGANIZATION MEMBER

DATED: 7-16-03