

PUBLIC LAW BOARD NO. 6621

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE**

And

UNION PACIFIC RAILROAD COMPANY

Case No. 50

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Statement of Claim: It is the claim of the System Committee of the Brotherhood that:

1. The Level III upgraded to Level IV (thirty day suspension) assessed Laborer R. Pompa for his alleged unauthorized absence on October 21, 23 and 24, 2003, was without just and sufficient cause and excessive and undue punishment.
2. Laborer R. Pompa shall now be compensated for all wage loss suffered and have his record cleared of this incident.

Facts

Claimant Robert Pompa was hired by the Union Pacific Railroad Company on March 3, 1981. He established and holds seniority rights in various classes within the Track Sub-department, Sacramento Division, Western Seniority District, and was working as a laborer on Gang 7303 when the incidents involved here occurred.

Claimant was absent from work on October 21, 23, and 24, 2003. Thereafter, he was notified that an investigation would be held based on his alleged failure to obtain proper authority for his absences in violation of Rule 1.15 – Duty Reporting or Absence, which states:

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.

Continued failure by employees to protect their employment will be sufficient cause for dismissal.

Following a hearing, which was held on December 29, 2003, it was determined that Claimant had violated Rule 1.15 and, thereafter, he was assessed Level IV discipline.

The Organization filed a claim on Claimant's behalf on March 4, 2004, which the Carrier declined by letter dated April 21, 2004. The Organization rejected the Carrier's decision by letter dated May 4, 2004, and the Carrier responded by letter dated June 21, 2004. Following a conference on October 5, 2004, which did not resolve the claim, the Organization requested that the matter be submitted to this Board for final decision.

Contentions of the Carrier

The Carrier contends that the Record contains substantial evidence that Claimant failed to report for duty as scheduled on October 21, 23, and 24, 2003 without obtaining prior authority to lay off work. Claimant, having already been placed in the PAL program due to a high level of absenteeism, had been counseled on appropriate procedures to follow when reporting absences. Specifically, the Carrier contends that Claimant knew (1) he needed to contact his manager/supervisor prior to the start of his 5:30 a.m. shift when calling in sick, and (2) he had to speak directly to his manager/supervisor because leaving a voicemail was not sufficient.

Nevertheless, according to the Carrier, Claimant missed work on October 21, 2003 and did not even try to reach his supervisors until 9:30 a.m. He finally spoke to Gordon

Thompson, Manager Track Projects, at 10:00 a.m., 4 ½ hours after he had already violated Rule 1.15.

As to October 23, the Carrier submits that Claimant simply left a voicemail, stating that he would be absent. Thereafter, he made no further effort to reach a supervisor either on that day or October 24. Although Claimant's voicemail message on October 23 was correctly left at 5:30 a.m., the Carrier asserts that PAL procedures required Claimant to verbally report his absence directly to a supervisor.

The Carrier acknowledges that it scheduled a physician's appointment for Claimant on October 24. It contends, however, that Claimant's legitimate doctor's appointment did not excuse him from following the required call-in procedure relative to his absence that day.

It is the Carrier's additional position that Claimant received a fair and impartial hearing. He was afforded written notice of the charges against him; adequate time to prepare a defense; the right to representation; and the opportunity to produce and examine witnesses and evidence. Having properly determined that Claimant did not obtain prior authority for his absences on that days in question, the Carrier asserts that it adhered to the UPGRADE policy in imposing discipline. It correctly took into account the nature of Claimant's violations and his previous discipline, which already was at an assessment level of III when he violated Rule 1.15.

Contentions of the Organization

The Organization contends that Claimant was legitimately absent on October 21, 23, and 24, 2003 due to personal and family illness. Moreover, Claimant's manager, Gordon

Thompson, knew as of October 21 that Claimant was going to be absent until the following week (October 28) as a result of these health problems.

Specifically, the Organization submits that on Tuesday, October 21, 2003, at 10:00 a.m., Claimant called in and said his family had been sick since Saturday; he had taken his wife and kids to the hospital with fevers on the night of October 20; and he did not get home from the hospital until 4:00 a.m. He was not able to catch his bus to go to work, and in any event, was exhausted and needed some rest. In these circumstances, the Organization submits that Mr. Thompson "could have shown some compassion." (Employee's Ex. A-2, p. 3).

As to October 23, Mr. Thompson admitted that at 5:20 a.m., Claimant left a voicemail advising that he would be absent that day due to his family's illness. The Organization further argues that Claimant made it clear he would not be returning to work until October 28, in part because he had an appointment with his therapist on October 27. On October 24, Claimant had an appointment with the Carrier's physician. Claimant felt that Mr. Thompson was aware of this appointment inasmuch as it had been arranged by the Carrier. Therefore, Claimant did not seek permission to be off work. Given these circumstances, the Organization asserts that the Carrier lacked any reasonable basis to assess Claimant Level IV discipline.

Findings

While the Organization contends that Claimant was denied due process, the evidence in the Record supports the conclusion that he had a fair and impartial hearing. Consistent with Rule 45, Claimant was provided with written notice of the charges against him. He was afforded time to prepare a defense, the benefit of representation and a full hearing,

and opportunity to present and examine witnesses and evidence. The Organization's claims in regard to procedural deficiencies are without merit.

With respect to the merits of the claim, the credible evidence in the Record shows that Claimant neither reported to work as scheduled on October 21, 23, and 24 nor obtained permission to be absent on those days.

On October 21, Claimant did not even try to call Mr. Thompson until after 9:00 a.m., in clear violation of the rule requiring him to call in by 5:30 a.m. Even recognizing that Claimant had a rough night at the hospital with his ailing family, it would have taken only a few minutes to call in. Moreover, it was his absolute obligation to do so.

Claimant's behavior on October 23 and 24 likewise reflected his disregard of applicable rules. The credible evidence in the Record indicates that while Claimant knew he would be absent on October 23 when he spoke to Thompson on October 21, he never made mention of this fact. Furthermore, he was fully aware that it was not sufficient to leave a voicemail message for purposes of reporting off. He had been repeatedly counseled by Mr. Thompson and had been placed under the PAL program earlier in the year precisely to deal with his lateness/attendance issues.

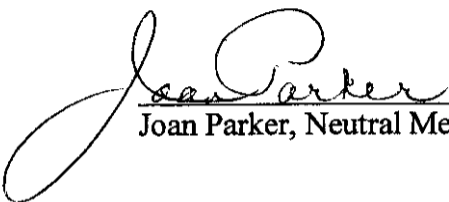
Claimant did not receive proper authority to be absent on October 24, 2003. The fact that he had an appointment with the Carrier's doctor did not relieve him of the requirement to advise his manager and secure permission to be away from the job. Claimant made no effort to reach anyone on October 24, and while personal and family health problems might have prevented him from coming to work, those circumstances did not negate his duty to obey the rules for reporting absences.

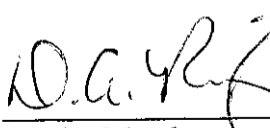
The discipline assessed against Claimant is supported by his prior disciplinary level and the nature of his offense. Claimant was in violation of Rule 1.15, particularly because he conceded that he knew the proper procedures but failed to follow them. Moreover, he had been given the chance through the PAL program to resolve his absenteeism issues.

Claimant already was at Level III when he violated Rule 1.15. Violations of this Rule warrant a Level I disciplinary assessment. Therefore, pursuant to the Progressive Disciplinary Table of the UPGRADE policy, Claimant's Level I violation resulted in a Level IV assessment. In this case, it may not be concluded that the penalty was arbitrary or capricious. Thus, the discipline must stand.

Award

The claim is denied.


Joan Parker, Neutral Member


Carrier Member

Dated: Feb 13 2006


Organization Member

Dated: 2-13-06