

## PUBLIC LAW BOARD NO. 7062

**PARTIES TO  
THE DISPUTE:**

Brotherhood of Maintenance of Way  
Employees Division of the International  
Brotherhood of Teamsters

vs.

Union Pacific Railroad Company

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Award No. 7/Case No. 7

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood that:

- 1) The Level 2 UPGRADE discipline assessment to Mr. C. O. Bennett in connection with alleged violation of Rule 1.13 and 1.15 is unjust, unwarranted and in violation of the Agreement (Carrier File 1460010).
- 2) As a consequence of the violation referred to in Part (1) above, it is requested that the charge letter dated June 24 [sic] 2006 be removed from all company records. You also request that the Claimant be reinstated with all back pay, seniority unimpaired, all vacation rights, and all personal expenses to be reimbursed back to him while driving from his home to the investigation and back home, while attending the investigation."

**FACTS AND FINDINGS OF THE BOARD:**

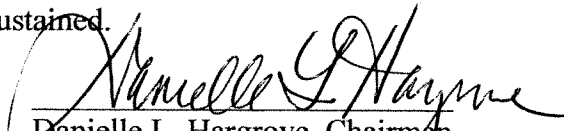
The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the parties, claim and subject matter herein, and that the parties were given due notice of the hearing which was held on March 12, 2008 in San Antonio, Texas.


The record evidence reveals the following: Claimant entered Carrier's service on May 5, 2003. He maintains seniority within the various Groups of the Agreement between the parties. On April 21, 2006, Claimant, while working as a laborer, sustained an on-the-job injury on the Alhambra Subdivision at Milepost 485.80. Claimant's supervisor instructed Claimant to contact him before he sought medical attention. On April 22, 2006, Claimant absented himself from work without proper authority to seek

medical attention for his injury.<sup>1</sup> Carrier also charged Claimant with violating the 15 ft. work zone of SS 9613 by not communicating with the operator before entering his work zone. Carrier found that Claimant had violated Rules 1.13 and 1.15 and assessed Level 2 discipline.

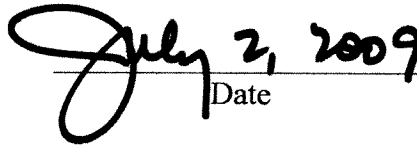
Upon review of the evidence on the record, we note the Organization's objection to the conducting officer's refusal to make certain eyewitnesses available for no reason other than the Claimant should have first asked the witnesses to appear. We find the conducting officer's management of this issue to be inappropriate and deprived Claimant the opportunity for a fair and impartial hearing. We sustain this claim having not reached the merits. The Carrier is to remove the Level 2 discipline in this case and all references to this incident be removed from his personal record.

**AWARD:** The claim is sustained.

  
Danielle L. Hargrove, Chairman  
And Neutral Member

  
Timothy W. Kreke  
Employee Member

  
Dominic Ring  
Carrier Member

  
Date

<sup>1</sup> Claimant informed the Safety Captain that he was seeking medical attention; however, he was not successful in making contact with his supervisor despite numerous attempts to do so.