

PUBLIC LAW BOARD NO. 7194

AWARD NO. 13

CASE NO. 13

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees Division – IBT Rail Conference

vs.

Union Pacific Railroad Company

ARBITRATOR: Janice K. Frankman

DECISION: Claim denied

STATEMENT OF CLAIM:

1. The thirty day (30) day suspension imposed upon J.D. Lara for violation of GCOR Rules 42.6 (Grade Crossings) and 42.7 (Railroad Crossing at Grade) in connection with being struck by a vehicle at Calvine Road Crossing on February 22, 2007, is based on unproven charges, unjust and unwarranted. (Carrier's File 1477658 SPW).
2. As a consequence of the violation referred to in Part 1, we respectfully request that the Level 4 discipline be expunged from Mr. Lara's record and that it reflect he has been exonerated of all charges. We further request that he be reimbursed for all loss of wages, straight time and overtime, for the period he was suspended May 1 through 31, 2007.

FINDINGS:

The Board, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee 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 dispute herein; and that the parties were given due notice of the hearing.

Claimant commenced service with Carrier on January 7, 2007, and holds seniority rights in various classes within the Track Sub-department, on the Sacramento Division, Western Seniority District. He was assigned and working as a track Supervisor on Gang 7346 headquartered at Stockton CA when the incident involved in this dispute occurred.

Claimant was inspecting track on his assigned territory on February 22, 2007. As he approached the Calvine Road Crossing, a four lane road, he stopped at the crossing as the gates were lowering. He could see that the two eastbound lanes and one westbound lane were stopped but could not see to clear the second westbound lane. The gates were about two thirds of the way down. He moved his Hy-rail forward and was stopped to check for cars in the second westbound lane before proceeding, when a vehicle came around the gate as it was lowering and collided with the front of the Hy-rail. The driver of the other vehicle was charged with fault at the scene.

Under Carrier's Operating Rules 42.6 and 42.7 "(t)rack cars and on-track equipment must approach all grade crossings prepared to stop and must yield the right of way to vehicular traffic." and "(t)rack car operators must stop the track cars and verify that the route is clear before passing over railroad crossings at grade, unless the crossing is protected by the gates that are set against the other route."

Organization has challenged the discipline procedurally and on its merits. It contends Carrier violated its UPGRADE Discipline Policy when it exacted unproven discipline, and argues that Carrier applied UPGRADE in a disparate manner pointing to lesser discipline imposed for a more serious at fault accident involving another employee which occurred the same day. It asserts Carrier has violated Rules 1 and 45 of the Agreement, denying Claimant a full and fair hearing.

Organization argues Claimant did not violate either Rule 42.6 or 42.7. They assert he was stopped on the track at the crossing as required when a vehicle came around the gate "to beat it" and hit him head-on. It seeks reversal of the suspension and expungement of Claimant's record.

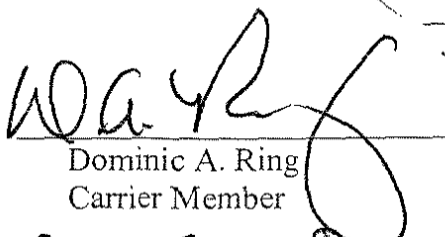
Carrier argues Claimant was provided a fair and impartial hearing, and that it has provided substantial evidence in support of its action. It argues there is no basis for leniency or mitigation of the discipline. It points to Claimant's admission at the investigation that he had entered the crossing when the gates were about two thirds down. It argues this Board has no jurisdiction to consider leniency, that the record on the property fails to support any due process violation and that UPGRADE was applied properly prescribing Level 4 discipline for violation of the Rules in question.


There is no evidence that Claimant was denied a full and fair hearing. Although one question was asked relative to whether Carrier applies UPGRADE the same to all employees, there is no other evidence to support Organization's argument that Claimant was subject to disparate treatment. No detail was provided for consideration by the Managing Conductor. Moreover, reference to an accident involving another employee the same day which, by its description sounds to be more serious than this incident, does not support a conclusion that lesser discipline exacted in the other case was improper or reflects disparate treatment of Claimant.

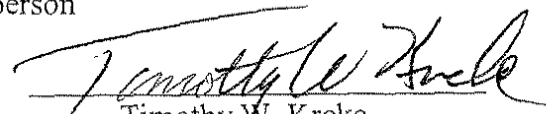
Claimant, by his own admission, violated the unambiguous requirements of GCOR Rule 42.7. However, the evidence does not support a conclusion that he violated GCOR Rule 42.6. Organization has not provided evidence or argument relative to application of UPGRADE to Claimant in this case. It did not seek leniency, as Carrier has argued, or anticipate the conclusions reached here so as to provide a basis for reduced discipline. Carrier has provided substantial evidence in support of its action, and this Claim is properly denied.

AWARD

Claim denied.


Dominic A. Ring
Carrier Member
Oct 15, 2008


Janice K. Frankman, Chairperson
Neutral Member


Timothy W. Kreke
Organization Member

Oct, 15, 2008