

PUBLIC LAW BOARD NO. 7633

Case No.: 05/Award No. 05
System File No.: UP300WF12/1568231
Claimant: Christopher J. Lockett

UNION PACIFIC RAILWAY COMPANY)
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION)

Statement of Claim:

1. The discipline [Level 4 ten (10) day suspension] imposed on Mr. C. Lockett by letter dated May 21, 2012 for alleged violation of Rule 1.13 Reporting and Complying with Instructions and Rule 1.15 – Reporting or Absence in connection with allegations that the Claimant was absent without authority on May 14, 2012 was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP300WF12/1568231).
2. As a consequence of the violation referred to in Part 1 above, the Carrier must remove the discipline from Mr. Lockett’s record with seniority and other benefits unimpaired and compensate him at the straight time and overtime rates of pay for all wage loss suffered as a result of the Carrier’s unjust and improper discipline.

Facts:

By letter dated April 13, 2012 the Claimant was instruction to report on April 24, 2012: “for investigation and hearing on charges to develop the facts and place responsibility, if any, that while employed as a Trackman on Gang-Gang 9160 on March 14, 2012, you were allegedly absent without authority and failed to follow instructions for taking days off.”

The Notice further noted that the Rules involved were Rule 1.13 Reporting and Complying with Instructions and Rule 1.15 Duty—Reporting or Absences. By mutual agreement the hearing was postponed until May 9, 2012.

Carrier Position:

The Carrier met its burden of providing substantial evidence that the Claimant was absent without authority, which he admitted. The Claimant also acknowledged that he failed to contact his Supervisor. Supervisor Ritch did not receive the alleged call or text message from the Claimant, but a text message would not comply with the Tie South absence policy. The receipt provided by the Claimant at the formal investigation supposedly documenting the purchase of two tires does not provide documentation and was not presented as required on the Claimant's March 15, 2014 return to work. Nor did the Claimant object to the unauthorized absence notation in the 660 and present the receipt then.

The offense was serious and the discipline, which the Board does not have the authority to question, is appropriate. The Claimant was provided due process rights and given a fair and impartial hearing.

Organization Position:

The Carrier has failed to meet its burden of proof. The unexcused absence notation on the 660 is not an admission of guilt nor does it show the reason for the absence. Furthermore, the Claimant was given a waiver of the rules. He had contacted Supervisor Ritch and had a receipt for two tires, thus documenting the reason for the absence.

Findings:

The Organization has not claimed the absence of a fair and impartial hearing or the absence of due process, thus the Board does not address these issues. The Tie South policy on absences, of which the Claimant should have been well aware, requires a call to the Supervisor at least one hour before starting time and specifically states; "leaving a message doesn't constitute authorization to be absent or tardy" (Carrier's Ex. A). The Claimant acknowledged his March 14, 2012 absence. Supervisor Ritch testified credibly that he received no call from the Claimant. Moreover, even accepting that the Claimant might have tried to send a text message to Supervisor Ritch to say that he needed another vacation day for personal reasons (but not mentioning flat tires), the text message did not place the Claimant in compliance with the Tie South absence policy.

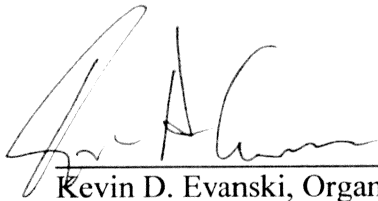
The receipt provided by the Claimant establishes nothing in the Board's view. If the Claimant had to replace two flat tires the day before as he testified, he should have had the receipt to present upon his March 15, 2012 return to work. He did not. The receipt presented at the formal investigation does not show the location of the tire store or that money was actually received from the Claimant. These facts leave the receipt suspect and of no probative value. In short, the Claimant was absent and, even if for good reason, which he has not established, he did not comply with the Tie South policy. The violation of Rule 1.13 and Rule 1.15 has been established.

Award:

Claim denied.

Order:

The Board, after consideration of the dispute identified above, hereby orders that no award favorable to the Claimant be entered.



Kevin D. Evanski, Organization Member



Katherine N. Novak, Carrier Member



I. B. Helburn, Neutral Referee

Austin, Texas
February 20, 2014