

PUBLIC LAW BOARD NO. 7633

Case No.: 10/Award No. 10
System File No.: UP305WF12/1569855
Claimant: Christopher J. Lockett

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

Organization's Statement of Claim:

1. The discipline (Level 5 Dismissal) imposed on Mr. C. Lockett by letter dated June 28, 2012 for alleged violation of Rule 1.13 (Reporting and complying) and Rule 1.15 (Duty – Reporting or Absence) in connection with allegations that the Claimant was absent without authority on May 12, 2012 and failed to follow instructions for taking days off was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP305WF12/1569855)
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 for all wage and other losses suffered as a result of the Carrier's unjust and improper discipline.

Facts:

By letter dated May 24, 2012, the Claimant was directed to appear on June 13, 2012 for an “investigation and hearing on charges to develop the facts and place responsibility, if any, that while employed as Trackman on Gang 9160, on May 12, 2012, you were allegedly absent without authority and failed to follow instructions for taking days off.”

The Notice further stated that substantiated allegations would result in violations of Rule 1.15 Duty – Reporting or Absence and Rule 1.13 Reporting and Complying with Instructions and that the Claimant was being withheld from duty pending the outcome of the investigation and hearing.

Carrier Position:

Substantial evidence provided by Supervisor Ritch's testimony established that the Claimant had been authorized to be off work on May 11, 2012 but that his request to be away on May 12, 2012 had been denied. Nevertheless, the Claimant did not work on May 12, 2012 and returned to work the following day without the required proof of the previous day's unauthorized absence. The Claimant's previous violations of Rule 1.15 demonstrate his failure to learn from past infractions. His story changed from needing to be absent May 12 due to his grandfather's illness to needing to attend a child support hearing on May 12. Questionable documentation for the May 12, 2012 absence was not provided until the investigation. There are discrepancies between Supervisor Ritch's version of the events in question and the version provided by the Claimant. Prior awards support the principle that the Hearing Officer's determination of credibility must be deferred to by the Board.

Because substantial evidence supports the serious charges, the Board is without authority to overturn the discipline imposed by the Carrier, as the action was not arbitrary and capricious. Because this was Claimant's third violation of the same rule within thirty-six (36) months the current violations resulted in the assessment of Level 5 UPGRADE discipline, which is permanent dismissal.

The investigation was fair and impartial. The Carrier's failure to include in the notice of investigation that the Claimant was facing dismissal, even though the notice included information that he had been removed from service, was not so egregious as to justify setting aside the discipline.

Organization Position:

The investigation was not fair and impartial because the notice of investigation did not advise the Claimant of possible dismissal, but referred only to a Level 3 UPGRADE offense. For this reason alone, the claim should be sustained.

The Carrier has not proven the violation of Rules 1.15 and 1.13. The Organization provided documentation of the Claimant's attendance at the May 12, 2012 child support hearing. The Claimant had told Supervisor Ritch that he would be unable to be at work that day.

Dismissal was unwarranted because it was punitive rather than corrective.

Findings:

The investigation was fair and impartial. While the better practice would have been to make clear to the Claimant in the notice of investigation that he was facing possible dismissal, the notice did clearly put the Claimant and the Organization on notice as to what they needed to defend against. The Organization has not contended and the

Board does not believe that omission of a caution against possible dismissal in any way prejudiced a defense against the charges as specified.

The Board has been presented with two opposed versions of the events in question. In summary, Supervisor Ritch stated that the Claimant asked for and did not receive authorization to be away from work on May 12, 2012 for the same reason he was authorized absence the day before—family illness apparently involving the Claimant’s grandfather. When the Claimant returned the following day, he was asked for and did not produce documentation for the unauthorized absence despite the fact that the Claimant was aware of the Tie Gang policy requiring such documentation.

Claimant testified that on May 10, 2012 he had asked for and received authorization from Supervisor Ritch to be off work on May 11-12 to attend a child support hearing in Dallas, that he had supporting documentation in his car when he returned on May 13, 2012 but did not produce it because Supervisor Ritch did not ask him about it.

The Board notes that even the document presented by the Organization on the Claimant’s behalf, “Child Support Review Process Notice,” asks the Claimant to “Please attend your Child Support Review Negotiation Conference scheduled for 9:30 AM on May 12, 2012.” The notice does not require the Claimant’s attendance and there is nothing in evidence that confirms his attendance at the conference. The Claimant’s changing story about his May 13, 2012 absence, the lack of evidence requiring the Claimant to appear at the May 12 Child Support Review, the lack of evidence establishing his presence at the Review and the Claimant’s failure to produce documentation upon his return to work leads the Board to conclude that there is substantial evidence that the Claimant violated Rules 1.15 and 1.13.

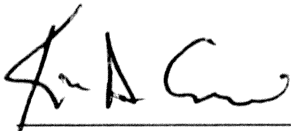
The Carrier’s UPGRADE discipline policy is well settled, having found support in previous awards. But, even if hypothetically the Board were free to substitute its judgment for that of the Carrier, this would not be the case that would justify such an action. The Claimant’s disciplinary history includes prior violations of Rule 1.15 in July, October and December 2011 and a safety violation (Rule 1.1) in January 2012. When a Claimant has shown no inclination to learn from corrective discipline, any inclination a Board might have toward lesser discipline than that assessed by the Carrier would surely be without justification. There is no point in continuing with corrective discipline when it is obvious that it has not accomplished its intended purpose.

Award:

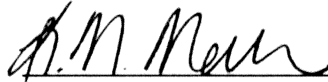
Claim denied.

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
March 10, 2012