

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

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

and

UNION PACIFIC RAILROAD COMPANY

Case No. 273

Award No. 249

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

1. The Level 3 (five day actual suspension) assessed Boom Truck Operator L. Velazquez for her alleged violation of UP Rules 136.3 and 136.4 when she allegedly fouled the main line without proper on track safety on April 9, 2005 at or near Mile Post 1268 on the Lordsburg Subdivision was without just and sufficient cause and in violation of the UP Upgrade Policy (System File UPWJ-7459D/1432256).
2. As a consequence of the violation referred to in Part (1) above, Boom Truck Operator L. Velazquez ' . . . must have her record cleared of the charges against her and be compensated at her applicable rate for all time lost time as a result of the improper discipline assessed her. Claimant must also be compensated for the weekend travel and the rest day per diem that she was deprived as a result of the discipline assessed."

FINDINGS:

At the time of the events leading up to this claim, the Claimant was employed by the Carrier as a boom truck operator.

On April 14, 2005, the Carrier issued to the Claimant a Waiver/Hearing form that indicated that the Claimant would be assessed Level 3 discipline in connection with an April 9, 2005, incident in which the Claimant allegedly fouled the main line without proper On Track safety. The Claimant requested an investigation, which was conducted

on May 5, 2005. By letter dated May 20, 2005, the Claimant was notified that as a result of the hearing, she had been found guilty as charged and was being assessed Level 3 discipline (a five-day actual suspension). The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to suspend the Claimant. The Carrier denied the claim.

The Carrier contends that on the property, the Organization never asserted that a procedural violation occurred. The Carrier maintains that it gave proper notice of the hearing in accordance with Rule 48, and the Organization did not raise any exceptions on the property. The Carrier insists that the Claimant's own signature on the Waiver/Hearing Offer demonstrates her election to go to a formal investigation, and the Organization belatedly attempted, at the commencement of the hearing, to request C.O.R.E. Training. The Carrier argues that neither the Claimant nor the Organization requested C.O.R.E. Training prior to the commencement of the formal hearing. The Carrier emphasizes that the Organization has not argued that the Carrier compromised or violated, in any way, the Claimant's due process rights. The Carrier suggests that the Organization's request for C.O.R.E. Training was a desperate plea because the Organization realized that the charges against the Claimant were proper and that it could not present a plausible defense on the Claimant's behalf.

The Carrier additionally contends that because there is an irreconcilable factual dispute between the parties with regard to whether the Claimant requested and/or was denied C.O.R.E. Training prior to the hearing, the Board is not in a position to decide which party is correct. The Carrier points to several Third Division Awards that have

found that where there is an irreconcilable dispute as to the facts necessary to resolve a claim, the Board has no choice but to deny the claim. The Carrier asserts that there is no reason to reach a different result in this case.

The Carrier then asserts that once this Board has substantiated the presence of substantial evidence in the record, the Board lacks the authority to overturn the level of discipline assessed, unless the Board finds that the discipline was arbitrary, capricious, or an abuse of Carrier discretion. The Carrier insists that the discipline at issue was in accordance with the Carrier's UPGRADE Policy. The Carrier argues that on April 9, 2005, the Claimant failed to hold a proper job briefing, in addition to fouling the main line track without getting proper On Track Safety before attempting to pick up rail. The Carrier emphasizes that the job briefing is not complete unless each roadway worker clearly understands the On Track Safety procedures and instructions that are required for the task at hand.

The Carrier emphasizes that in the instant situation, any workers who needed to foul the main line track were required to check in with the Employee in Charge (EIC). The Carrier insists that the Claimant failed to hold a job briefing with the EIC prior to fouling the main line track, and the Claimant failed to secure the proper On Track Safety for herself and her work group. The Carrier points out that the record shows that neither the Claimant nor her helper ever specifically informed the EIC of the nature of the work they were to perform.

As for the Organization's assertions about the morning job briefing, the Carrier argues that the morning meeting is irrelevant because the Claimant, who was operating

the boom truck when the violation occurred, failed to give prior notice to the EIC of the nature of the work that she and her helper were to be performing. The Claimant also failed to properly secure the On Track Safety for her work group as she fouled the main line, while an oncoming Amtrak train was approaching.

The Carrier insists that under these circumstances, the discipline assessed was not arbitrary, capricious, or an abuse of Carrier discretion. The Carrier emphasizes its obligation to ensure the safety of its employees, including ensuring that its employees comply with the established safety rules. The Carrier argues that it must discipline employees, such as the Claimant, who have demonstrated an inability to follow those rules. The Carrier maintains that the Claimant clearly was in violation of the Rules, and the Level 3 discipline was properly assessed.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the Claimant made repeated requests for C.O.R.E. Training prior to the scheduling of the hearing in this matter. The Organization asserts that the Carrier supervisors who received the Claimant's requests did not have knowledge of this option, so they offered the Claimant only the choice of waiving the hearing or holding a hearing on the charges against her. The Organization argues that the Carrier arbitrarily denied the Claimant her right to exercise the training and education option under the UPGRADE Policy. The Organization emphasizes that the Carrier simply ignored its own policy, and it then issued discipline based on unproven charges.

The Organization then asserts that the Claimant's helper believed that he held a

job briefing with the EIC prior to parking the boom truck at the work location. The Organization argues that it was only after the incident occurred that the Claimant's helper was advised that the conversation that he had with the EIC was not considered a job briefing. The Organization maintains that the crux of the whole matter is that the EIC did not notify the Claimant and her helper that he had cleared an Amtrak train into the work area.

The Organization emphasizes that the record clearly establishes that the Claimant and her helper were present for the morning job briefing with the gang. Upon arriving at the work area, the Claimant's helper did advise the EIC that they were going to be working right behind him, picking up rail. The boom truck was parked in a location where the boom truck and its outriggers were not fouling the track. The Organization acknowledges that the Claimant did raise the boom from the boom cradle, but it insists that the Claimant did not swing the boom to foul Track No. 2, the nearest rail to the boom truck.

The Organization maintains that the Carrier failed to support the charges against the Claimant, and, therefore, the assessed discipline was improper. The Organization ultimately contends that the instant claim should be denied in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization and the Carrier, and we find them all to be without merit.

This Board has reviewed the evidence and testimony in this case, and we find that

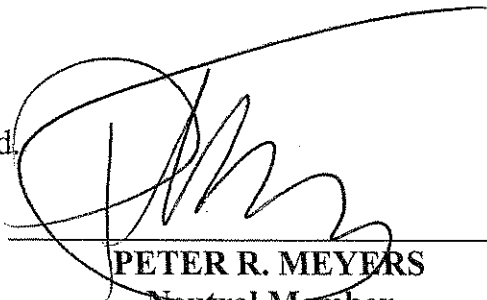
there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier rules when she fouled the main line without taking the proper precautions in regards to track safety on April 9, 2005. The record reveals that the Claimant never properly held a job briefing, nor did she follow the on-track safety rules prior to fouling the main line. That misconduct on the part of the Claimant put both her and the other employees in a dangerous situation which, fortunately, did not lead to any major injuries or accidents.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant was assessed a Level 3 discipline in this case for her wrongdoing. Given the seriousness of the rule violations, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it imposed that type of discipline on the Claimant. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 6-25-07



CARRIER MEMBER

DATED: 6/25/07