

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

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

and

UNION PACIFIC RAILROAD COMPANY

Case No. 275

Award No. 251

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

1. The Level 2 (five day suspension) assessed Foreman S.H. Roberts for his alleged failure to comply with instructions when he failed to leave his men at the job site while getting ice or fuel at approximately Mile Post 81 on July 26, 2005 was without just and sufficient cause (System File 4RM-9671D/1433250D).
2. Foreman S.H. Roberts shall now have '... the charges against the Claimant must be overturned and the level 2 discipline removed from his record. Furthermore, Claimant must be compensated for the five (5) day suspension he served along with the eight (8) hours of Holiday pay he did not qualify for.'"

FINDINGS:

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

By letter dated July 28, 2005, the Claimant was directed to appear for a formal investigation and hearing on charges that the Claimant allegedly had failed to comply with instructions to leave men at the job site while getting ice or fuel at approximately milepost 81 on the Clinton Subdivision. After a postponement, the investigation was conducted on August 12, 2005. By letter dated August 19, 2005, the Claimant was informed that as a result of the investigation, he had been found guilty as charged and was

being assessed Level 2 Discipline, a five-day actual suspension. The Organization thereafter filed an appeal, challenging the Carrier's decision to suspend the Claimant. The Carrier denied the claim.

The Carrier initially contends that it presented substantial evidence to support the conclusion that the Claimant acted in violation of Rule 1.13 when he deliberately countermanded Director Hoerstkamp's policy and took the three employees he was supervising to the local convenience store. The Carrier points out that the testimony at the hearing and the Claimant's own admissions demonstrate that the Claimant was in violation of Rule 1.13. The Carrier argues that there is no merit to the Organization's position that the Claimant had no choice but to violate the policy in order to ensure the safety of the three new employees assigned to work under the Grievant's supervision. The Claimant's deliberate and willful violation of a direct order from his superiors clearly shows that the Claimant acted in violation of Rule 1.13.

The Carrier goes on to argue that the Organization and the Claimant never disputed that the Claimant was given a direct order not to take the employees he was supervising to the convenience store. The Claimant nevertheless chose to disobey his supervisor's policy. The Carrier asserts that a number of Board Awards support the Carrier's position that the Claimant's admission of a rule violation is tantamount to a guilty plea. The Carrier therefore contends that the Claimant's admission of guilt is all that is required for the Carrier to prove the charges against the Claimant. The Carrier maintains that it provided substantial evidence, in addition to the Claimant's own

admission, that he violated Rule 1.13.

The Carrier then contends that during the handling of this matter on the property, the Organization never suggested that the Carrier committed any procedural violations. Instead, the Organization simply asserted that the discipline should be overturned. The Carrier maintains that the Organization is mistaken. The Carrier insists that it has satisfied its burden of demonstrating that the Claimant did, in fact, violate the cited rules. The Carrier emphasizes that the Claimant received a fair and impartial hearing, and the Carrier based its discipline procedures on the fundamental tenets of due process. The Carrier points out that it met all of its procedural obligations under Rule 19 of the Agreement. The Carrier therefore argues that the discipline at issue should not be disturbed.

The Carrier goes on to assert that once the Board determines that the Carrier has presented substantial evidence, then the Board lacks authority to overturn the level of discipline assessed. The Carrier emphasizes that the discipline cannot be overturned, even if it seems harsh, unless the discipline is found to be arbitrary, capricious, or an abuse of Carrier discretion. The Carrier maintains that the Board repeatedly has upheld Level 2 discipline in cases of Rule 1.13 violations. The Carrier argues that it did not act arbitrarily, capriciously, or harshly in assessing the Level 2 discipline at issue.

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

The Organization initially contends that the Carrier put the Claimant in a Catch-22

situation; the Carrier overlooked the provisions and application of Rule 1.1, providing that safety is the first concern, and it put production as a priority over safety. The Organization emphasizes that as Track Foreman, the Claimant was supervising relatively new, inexperienced employees who were not qualified to perform track work on their own. The Organization maintains that in the name of production, the Carrier supervisor wanted the Claimant to overlook the provisions of Rule 1.1 and allow a potentially injurious situation to occur in the name of production.

The Organization argues that as the Employee in Charge (EIC), the Claimant had the discretion to apply the provisions of the Rule 1.1. The Organization points out that the Carrier supervisor was not on the scene, yet he second-guessed the Claimant's call in this Catch-22 scenario. The Organization contends that if the Carrier is going to set up employees in these types of situations, then employees are going to get injured and/or killed. The Organization maintains that either safety is the first concern and the EICs are entitled to make that call, or production is the first concern and employees should not worry about safety.

The Organization asserts that in the instant situation, the Claimant made his decision based on safety as the first concern. If safety truly is the Carrier's first concern, then the Claimant made the right decision in not leaving his employees to work on the tracks without proper On-Track Safety protection, radio communication, and adequate supervision. By finding the Claimant guilty and imposing discipline in this case, the Carrier has ignored its policy of putting safety first. The Organization insists that the

charges at issue must be overturned.

The Organization ultimately contends that the instant claim should be sustained 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 we find them 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 deliberately disobeyed instructions of his supervisor on July 26, 2005. The record reveals that the Claimant admitted his violation of the rule at the hearing. The Claimant admitted that he had been informed of the policy that he was not supposed to do what he did.

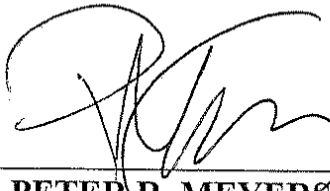
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

The record in this case indicates that the Claimant was issued a Level 2 discipline, which translated to a five-day suspension. Given the seriousness of the wrongdoing in this case, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the suspension to the Claimant. Therefore, the claim must be denied.

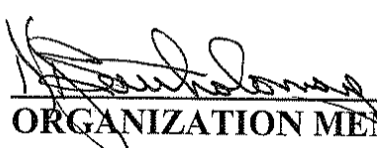
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AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 6-25-07



CARRIER MEMBER

DATED: 6/25/07