

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

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

and

UNION PACIFIC RAILROAD COMPANY

Case No. 278

Award No. 252

STATEMENT OF CLAIM:

It is the position of the Brotherhood that the discipline assessed Claimant Reginald Martin was capricious, unsupported and must not stand. Claimant Reginald Martin must be returned to active service and he must be compensated for all time lost and have any reference to the investigation removed from his personal record as outlined in Rule 48 of the effective Agreement.

FINDINGS:

By letter dated April 4, 2006, the Claimant was directed to appear for a formal investigation and hearing to develop the facts and place responsibility, if any, in connection with an April 12, 2006, incident in which the Grievant allegedly cleared the UP6852 eastbound train through the limits of Form B Track Bulletin 46414 without properly contacting all men and/or equipment checked in on the Form B Bulletin limits. The investigation was conducted, as scheduled, on April 12, 2006. By letter dated April 21, 2006, the Claimant was informed that as a result of the investigation, he had been found guilty of violating Rules 1.6, 121.1, 121.2.1, 121.2.4, and 121.2.5, and that he was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge the Claimant. The

Carrier denied the claim.

The Carrier initially contends that it has met its burden by presenting substantial evidence that the Claimant was in violation of its rules. The Carrier asserts that in accordance with prior Board Awards, it has produced sufficient substantial evidence to meet its burden of proof. The Carrier argues that considering the Claimant's actions, there can be no reason to overturn what is appropriate discipline.

The Carrier emphasizes that the Organization has not raised any sort of procedural objections, so the Board should find that no procedural errors occurred during the handling of this claim. The Carrier maintains that the Claimant's dismissal therefore should not be disturbed for any procedural allegation.

The Carrier goes on to assert that it is well-established that once an arbitral panel has substantiated the presence of substantial evidence, it lacks the authority to overturn the level of discipline assessed, even if that discipline seems harsh. The Carrier points out that discipline may be overturned only if the panel finds that it was arbitrary, capricious, or an abuse of Carrier discretion. The Carrier insists that the discipline imposed in this matter was in accordance with the Carrier's UPGRADE Policy, and that Rule 1.6 violations are accorded Level 5 discipline, which is dismissal.

The Carrier contends that the Claimant admitted that he did not ensure that all of the employees were clear before clearing the train through the gang limits. The Carrier argues that the Board cannot turn a blind eye to such a serious breach of the safety rules. The Carrier asserts that the Claimant committed very serious rule violations, and his violation of Rule 1.6(1) alone supports the assessment of Level 5 discipline. Because its

employees are engaged in dangerous work every day, the Carrier relies upon its employees to take safety very seriously in order to remain free from injury and to prevent accidents. The Carrier insists that its employees have to strictly follow the safety rules. Employees must be vigilant, and the Carrier maintains that there is no excuse for failing to remain so. The Carrier asserts that the Claimant did not follow the Carrier's mandate of "safety first," and he was negligent and careless regarding his own safety and that of his peers.

The Carrier emphasizes that Boards routinely have upheld Level 5 discipline when the claimants have violated Rule 1.6(1) and endangered the safety of themselves and others. The Carrier argues that the Claimant was trained, but did not use his training. Instead, the Claimant behaved recklessly, and the instant claim therefore should be denied.

The Carrier then addresses the Organization's reliance on discipline assessments in other cases. The Carrier insists that these other cases involve incidents that are quite different from the situation at issue. Moreover, numerous referees have held that each discipline case must stand on its own merits. The Carrier maintains that there is no way that the Board can conclude that the Claimant was treated harshly when he was dismissed for a serious breach of the safety rules.

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

The Organization initially contends that the discipline assessed the Claimant was unduly harsh and not supported by the alleged violations. The Organization asserts that

although the Claimant passed the written rule tests regarding the “employee in charge,” the Claimant may have lacked the experience and proper supervision for his assignment on the date in question.

The Organization points out that the transcript shows that the Claimant had been assigned to other duties, and he did not actually assume the task of clearing trains on the main line until the morning in question. The Organization emphasizes that instead of being coached or instructed in the proper way to protect fellow employees, the Claimant was punished and deprived of his railroad career by the loss of all of his seniority.

The Organization additionally asserts that the transcript shows that the Claimant unsuccessfully tried to reach Foreman Riemer several times, and that he released the train upon talking to Foreman Aquilar and seeing that Foreman Reimer and his crew was in the clear of Main Track 1. The Organization argues that it is entirely feasible that the Claimant got the impression from his conversation with Aquilar that Foreman Reimer’s crew was clear for train movement. The Claimant may have made an error by not strictly adhering to the Carrier’s rule due to this misunderstanding, but the Claimant’s actions did not show a complete disregard of the safety of his fellow employees in violation of Carrier rules.

The Organization emphasizes that the Claimant’s actions show that he was not guilty of the charges leveled against him. The Claimant acted in what he thought was a prudent manner for the situation, and the Carrier failed to prove any indifference or carelessness toward the safety of others.

The Organization goes on to assert its dismay that the Carrier included Rule 1.6,

requiring dismissal, among the charges against the Claimant. The Organization argues that this is contrary to the Carrier's own Discipline Policy of taking remedial action unless an employee repeatedly violates or disregards the safety rules. The Organization maintains that a review of past cases with similar alleged violations shows that the Claimant was treated differently than other employees. The employees involved in these other cases received less severe penalties.

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 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 several Carrier safety rules when he allowed the train in on the limits of the gang's employees and the machines. This Board is convinced upon reviewing the transcript that the Claimant was guilty of violating Rules 1.6, 121.1, 121.2.1, 121.2.4, and 121.2.5 when he cleared an east-bound train through the limits of Form B Track Bulletin 46414 without properly contacting all men and/or equipment who were checked in on the Form B Bulletin limits. The Claimant admitted that he made a mistake when he violated those rules and should not have allowed the train to proceed.

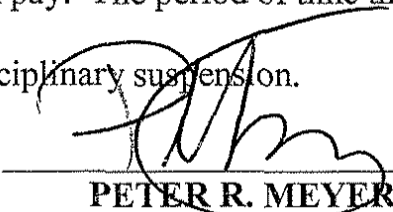
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its

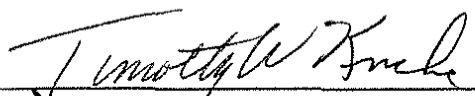
actions to have been unreasonable, arbitrary, or capricious.

This Board recognizes the seriousness of the violations committed by the Claimant; but, in comparison with the other employees who were disciplined in this case, we believe that the Claimant received excessive punishment. The Claimant in this case had been employed by the Carrier for several years and had no prior incidents of wrongdoing. Consequently, we order that the Claimant be reinstated to service, but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension.

AWARD:

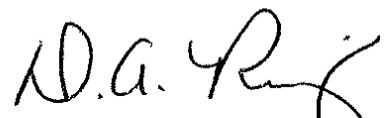
The claim is sustained in part and denied in part. The Claimant shall be reinstated to service, but without back pay. The period of time that the Claimant was off work shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER

DATED: Oct 3, 2008



CARRIER MEMBER

DATED: Oct. 3, 2008