

PUBLIC LAW BOARD 6159

Case No. 80
Award No. 80
Carrier's File No. 1240876
Organization's File No. 1422-57-5614.00D
NMB Code: 106
Claimant Conductor R. A. Evans

PARTIES TO THE DISPUTE:

UNITED TRANSPORTATION UNION

AND

UNION PACIFIC RAILROAD COMPANY

Statement of Claim:

Request of Conductor R. A. Evans, Los Angeles Service Unit,
for:

- 1) Removal of a Level 4 discipline assessment from his personal record, with seniority unimpaired,
- 2) Replacement of his wage loss and vacation credits resulting from his suspension from service for 30 days, to be served upon his return to service and
- 3) Replacement of his wage loss and vacation credits for attending an investigation on August 3, 2000.

Findings:

Upon the entire record and all the evidence, this Board finds the parties herein to be Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction of the parties and over the dispute involved herein.

The Claimant is a long-term employee having been first employed on June 1, 1968, as a Brakeman. He was subsequently promoted to Conductor working in the Los Angeles Service Unit.

On June 19, 2000, he was assigned as a Conductor on Train CWWLX-15. At approximately 4:45 a.m., he was leaving the yard office at East Los Angeles, which was an elevated building. As he descended the steps, he slipped and injured his ankle. The Manager Yard Operations (MYO), Cherne contacted the Manager of Terminal Operations (MTO), L. M. Seafair, who went to the yard and conducted a preliminary investigation into the Claimant's injury.

The MTO interviewed the Claimant and inspected the area of the accident. She then took the Claimant for medical attention at the U. S. Health and Urgent Care Medical Facility. The Claimant told the MTO it was dark as he was coming down the outside stairs and he did not have his lantern. He told her he thought he had slipped on some "vegetation" which was on the steps.

The MTO revisited the scene of the accident and did find a few leaves on the steps, but nothing unusual. She testified that overall, the area was clean and there were no tripping hazards. She ascertained the Claimant slipped at the bottom of the stairs not on the steps or tread itself. She also took into account the area had low lighting and the Claimant did not have his lantern. The stairs did have a hand banister. At her direction, the area was inspected by the Claims Department and found to be in order. After considering these facts, she decided the Claimant may have violated Rule 80.6 of the General Code of Operating Rules.

By UPS Next Day Air, the Carrier sent the Claimant a Notice of Investigation and Hearing dated June 28, 2000. Therein, he was advised to report for a formal hearing to be held at the Office of the Senior Manager of Terminal Operations, East Los Angeles, California, on July 11, 2000 at 1:00 p.m. The purpose of the hearing was to develop the facts and determine responsibility, if any, in connection with the allegation that on June 19, 2000, the Claimant failed to use a lantern or flashlight while working in low lighting, possibly contributing to his

injury. They cited a possible violation of Rule 80.6, which reads:

Rule 80.6 Working at Night or Low Light Level

Carry a light, or use additional lighting, when working at night or where there is a low or inadequate level of lighting.

Exercise care to avoid hazards caused by shadows resulting from the use of light.

The hearing was postponed and held on August 3, 2000. By certified letter dated August 30, 2000, the Claimant was informed the evidence produced at hearing demonstrated he had violated the cited rule. He was assessed a Level 1 discipline, which when combined with his discipline status of a Level 3, equaled a Level 4 discipline, which included a 30-day suspension which he was to serve upon his return to work.

The Organization appealed the discipline through the proper channels and it is now before this Board for consideration.

CARRIER'S POSITION

The Carrier maintains there is substantial evidence to demonstrate the Claimant's violation of Rule 80.6. They point to Claimant's 32 years of service and his familiarity with the area in which he was working on the night of his injury. They say the Claimant simply failed to take the steps necessary to protect himself.

They reference the Claimant's own version of the incident as evidence he did not utilize his lantern to descend the stairs despite his awareness that it was too dark to see the steps. They submit his testimony reveals he did not even take his lantern or any alternate source of light with him. They contend the accident could have been avoided had the Claimant seen the

object or leaf which presumably caused him to slip on the step twisting his ankle.

The Carrier insists any assertions by the Claimant that it wasn't necessary to carry a lantern are self-serving and not credible.

The Carrier maintains the discipline was reasonable and consistent with the Carrier's UPGRADE Discipline Policy. They report the Claimant's discipline status was at a Level 3 and the Level 1 (Letter of Reprimand) elevated his discipline assessment to a Level 4. The Carrier argues they have the prerogative to assess discipline once it is established a rule violation has occurred. They contend the Board is without authority to disturb the discipline assessed absent a showing the Carrier abused its discretionary authority. They maintain there is no such evidence in this case.

The Carrier contests any claim by the Organization the Claimant did not receive the results of the hearing in a timely manner. They insist the notice was mailed on August 30, 2000 which was within the time limits of the Agreement.

ORGANIZATION'S POSITION

The Organization objects to the Carrier's statement in the Notice of Investigation that the Claimant had to provide material witnesses at his own expense. They argue, if the Carrier had provided witnesses with relevant information, as fairness and due process require, the Claimant would have been able to establish a past practice of using the stairs in question without providing additional light. They insist the notice was defective because of the Carrier's assertion.

In this regard, the Organization references numerous Board Decisions which hold it is the Carrier's obligation to provide relevant witnesses at hearings. These Awards, they assert, hold

witnesses are not 'Carrier' witnesses or 'Union' witnesses, but, 'material' witnesses essential to developing the facts. Such witnesses, they claim, are essential in guaranteeing a fair and impartial hearing.

As to the merits, the Organization references the testimony of Carrier witnesses which substantiates the Claimant's assertions that other employees use the stairs without lanterns or flash lights. They say, these very witnesses admitted they used the stairs without providing additional light because there was lighting from several different sources. Moreover, the Organization submits, the testimony at hearing established the fact, no employee has ever been cited for a failure to carry a lantern or flashlight while using the stairs.

The Organization maintains the Carrier cannot suddenly change a past practice which has been condoned without providing sufficient notice the practice will no longer be permitted or accepted. Employees must be given fair notice and an opportunity to comply with the new rule. They assert there was no such warning provided. Therefore, they insist, the discipline should not be upheld.

In addition, the Organization states, the Carrier has routinely disciplined employees who sustain injuries. They cite numerous Public Law Boards who just as routinely overturn this discipline when it is not clear the injury was the result of a rule violation by the employee. The Organization submits the principles espoused in these cases should be applicable in this case.

The Organization asks the Board to sustain the claim.

DECISION

There is no doubt the Claimant was walking either from or towards his locomotive without the benefits of a flashlight or a

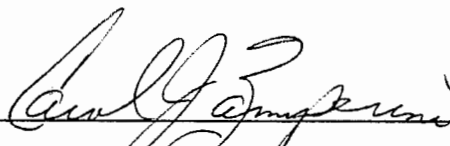
lantern. Although others may have had no difficulty navigating through the area without an additional light source, it is clear from the Claimant's own testimony, that he would have benefitted from additional light. Why else would he attempt to excuse his injury by saying it was dark. He was the one who said light was a factor. A Level 1 discipline is not too severe to remind employees they are required to carry a lantern or flashlight when they are attempting to maneuver in the dark.

As to the Level 4 assessment, this Board sustained the claim in Award 82 involving this Claimant. Therefore, the discipline status for the Claimant at the time of this rule infraction would not have been a Level 3. Therefore, Level 4 assessed in this case is without basis and should be expunged from the Claimant's record and replaced with a Level 1, Letter of Reprimand. He should be reimbursed any wages and/or benefits lost as a result of the Level 4 discipline assessed.

AWARD

The claim is denied, however, the discipline assessed shall be a Level 1, Letter of Reprimand for reasons outlined herein.

The Carrier shall comply with the Award within thirty (30) days of its receipt.



Carol J. Zamperini
Impartial Neutral and Chairperson



Robert A. Henderson
Carrier Member



J. Kevin Klein
Employee Member

Submitted this 14th day of March, 2001.