

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

**Award No. 30962
Docket No. 50703
22-1-NRAB-00001-210009**

The First Division consisted of the regular members and in addition Referee Elizabeth Neumeier when award was rendered.

(SMART – Transportation Division

PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“We present on appeal, claim of Trainmen (Claimant) M Tellez, Los Angeles Service Unit, for removal of Permanent Dismissal status, reinstatement to service with seniority unimpaired, compensation for all time lost and restoration of vacation credits until he is returned to service. Claim includes payment for all wage equivalence to which Claimant is entitled, such as medical/dental benefits and for any monetary loss for such coverage while dismissed from service.”

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Manuel Tellez III (“Claimant”) established seniority with Union Pacific Railroad (“Carrier”) on September 29, 1997, and was employed as a Conductor. Claimant was notified by letter dated May 15, 2020 to appear for a hearing on May 25,

2020, to develop the facts and determine his responsibility, if any, in connection with the following charge:

“On 05/06/2020, at the location of Industry, CA, near Milepost 502.0, Alhambra Subdivision, at approximately 07:40 hours, while employed as a CONDUCTOR, you allegedly left your assignment without proper authority after reporting your train departure and all work order reporting as not done for customer service exception. Additionally, you provided false information on [on] your federal tie screen regarding actual relieved and released times. This is a possible violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest”

A hearing was held on June 4, 2020. By letter dated June 12, 2020, the Claimant was advised by General Manager Transportation Steven Bybee that he was Permanently Dismissed.

The Organization’s contention that the Carrier has arbitrarily altered the handling process specifically outlined in the November 16, 2006 Discipline Agreement is unpersuasive. The Discipline Agreement does refer to “the Superintendent” issuing the decision. That Agreement does not preclude the Carrier from making changes in titles, however. The substance of the General Manager Bybee’s job was that of “Superintendent” as that title is used in the Discipline Agreement. To sustain the Organization’s procedural objection would be to elevate form over substance. Further, the Organization’s has not established that it was improper for General Manager Bybee to be the reviewing officer.

The Organization also contends that the Carrier failed to conduct a “fair and impartial” investigation when the Claimant and his Representative were denied the ability to review exhibits regarding this incident until the day of the investigation. Local Chairperson Wilson had requested that material sufficiently in advance to properly prepare. The morning before the hearing he was permitted to hear the audio tapes.

In response to Local Chairperson Wilson’s objection to the introduction of exhibits that he had not been given, Hearing Officer R. L. Turks stated:

“But if you’re objecting to it, I can note that into the record for a Reviewing Officer to make a ruling on it.” [Tr. 42-43.]

Hearing Officer R. L. Turks could have but did not afford Local Chairperson Wilson time to review the objected-to documents as has been done in other cases. By referring the objection to a Reviewing Officer he left the Organization with no way to adequately respond. This deprived the Claimant a fair and full investigation.

The Claim is sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division**

Dated at Chicago, Illinois, this 29th day of April 2022.