Quick Guide

Trials

And

Claim Submissions

Trial Preparation – Discipline - Claim Examples

Dear New Local Chairperson,

Enclosed in this booklet is a quick guide to trial preparation and claim submissions. Included is an outline of how I would prepare for a trial. I would make an outline of the charges, defense strategy, witness questions, procedural objections and the closing statement. I would also sit down with my witnesses well before the trial and go over their testimony. Remember, the accused will NOT always tell you the truth, so be prepared for the expected. I also found it useful to bounce ideas off other local officers and members. It is important to understand that in most cases no matter the evidence, your member will be found guilty. As a local chairperson it is your job to make sure everything relevant is gotten into the record either through testimony or your final statement.

I also found it very helpful to review the NO Rules, Guide to Investigation by Steve Young and Arbitrator Carroll Daugherty's 7 Tests of Just Cause. (Included)

Eventually you will come up with your own system, but the key in any case is to be properly prepared beforehand, especially with the claimant's testimony.

The case cited (Glennon – PLB 7349, Award 25) was a safety issue when a conductor refused to ride in the rear of P- 42 engine (insubordination – 30 days) before there were any handholds, hearing protection etc. – the conductor would have to ride the rear of the P -42 for about 30/45 minutes while wyeing engines about 3 or 4 times a day. We lost this case!

Also included is a section showing examples of claim listing and joint submissions for your reference.

Hope this helps! Any questions, please call the office.

Sincerely,

Charlie Yura – VGC GO-769

The Seven Tests for Just Cause

In 1964, Arbitrator Carroll Daugherty established a single standard to determine if the discipline or discharge of an employee can be upheld as a just cause action.

In the Seven Tests of Just Cause, the employer must be able to answer YES to the following seven questions:

1. Reasonable Rule or Order

Was the employer's rule or managerial order reasonably related to the orderly, efficient and safe operation of the business?

> This rule or order must not be arbitrary, capricious or discriminatory and must be related to the employer's stated goals and objectives.
>
> Even if this order is unreasonable, the member MUST obey, except in cases when doing so would jeopardize health or safety.

2. Notice

Did the employer give any warning as to any possible discipline or consequence that could result from that employee's action or behavior?

> While maintaining the contractual right to manage it's workforce by establishing the rules and orders necessary, the employer is responsible for informing the employees as to their meaning and application.
>
> The employer must advise the employee that any act of misconduct or disobedience would result in discipline.
>
> This statement should be clear, unambiguous and inclusive of any possible penalties.

3. Investigation

Prior to administering discipline, did the employer conduct an investigation to determine whether the employee did in fact violate or disobey a rule or order?

> The employer's investigation must be made BEFORE any disciplinary action is invoked.
>
> The employer is prosecutor, judge and jury in discipline cases, and must bear the full responsibility for collecting any and all facts that are relevant to the final decision.

4. Fair Investigation

Was this investigation fair and objective?

> The employer has the obligation to conduct a fair, timely and thorough investigation that respects the employee's right to union representation and due process.
>
> Once gathered, all facts must be evaluated with objectivity, and without a rush to judgment.

5. Proof

Did this investigation uncover any substantial proof or evidence that the employee was guilty of violating or disobeying a direct rule or order?

> Although there is no requirement of being preponderant, conclusive, or "beyond a reasonable doubt," any proof or evidence must be truly substantial.
>
> While conducting the investigation, the employer must actively seek out witnesses and search for evidence.
>
> If an offense cannot be proven, then no penalty could ever be considered just.

6. Equal Treatment

Did the employer apply all rules, orders and penalties evenhandedly and without discrimination to ALL employees?

> If other employees who commit the same offense are treated differently, there may be discrimination or disparate treatment, both of which would automatically violate this test.

7. Penalty

Was the degree of discipline administered reasonably related to either the seriousness of the employee's offense or to the record of past service?

> A proven offense does not merit a harsh discipline unless the employee has been proven guilty of the same (or other) offenses several times in the past.
>
> Though an employee's past record cannot be used to prove guilt in a current case, it can be used in determining the severity of discipline if guilt is established in the current case.
>
> Should two or more employees be found guilty of the same offense, their respective records will be used to determine their individual discipline. Thus, if employee A has a better record than employees B or C, then the employer has a right to give a lighter penalty to employee A without being discriminatory.
>
> The employee's offense may be excused through mitigating circumstances. For example, a warehouse employee found asleep on the job may be excused by the mitigating circumstance of being under medication by the company doctor. Or, an employee with domestic troubles may be proven incompetent rather than negligent, the latter indicating a willful deliberation.

Trial Introduction

All employees are entitled to a fair and impartial investigation; unfortunately there is no clear rule which defines what a fair and impartial trial is. There are no rules establishing the procedures for introducing evidence, making objections, questioning witnesses or even for the production of critical evidentiary documents. The fact is there are no agreements on most properties which even provide for a right of discovery prior to an investigation. So how fair is this process – quite frankly – it is not fair or impartial!

Although the carrier has the duty to develop all the facts, both for and against, in most cases, the carrier will only try to develop facts that prove their case. Therefore, it is important for a Local Chairman to develop and foster a working relationship with his managers, who in most cases will give you a heads up into the carrier's case and evidence.

Remember, there is no such thing as a neutral - Hearing Officer!

So what is your goal as a Local Chairman during a trial – simply – it is to get all relevant facts, evidence, testimony and procedural objections on the record to prove your case to a neutral arbitrator either through testimony, exhibits or your closing statement. Remember, RR arbitration is an appellate process whereby all evidence must be contained on the property record otherwise the arbitrator cannot consider new evidence in most cases.

Preparation is the key for winning any investigation.

Pre -Trial Preparation Checklist

- Read the Charge Letter carefully.
- What are the specifics of the offense?
- What are the relevant facts? Try to verify each person's story? (who, what, where, when and how)
- What are the pertinent Rules, Policies or regulations allegedly violated?
- Has the carrier complied with the disciplinary rule and timelines of the agreement?
- Does the intent sufficiently state the specifics of the alleged offense?
- What evidence is available to exonerate the accused?
- Are there any mitigating circumstances?
- Who are your witnesses?
- Have your witnesses been properly prepared?
- Do you have all necessary documents, requests and pictures for your defense?

Procedural Objections

- Due Process
  - Carrier has the obligation to provide a fair and impartial trial at which they must develop all the facts which includes evidence that tends to explain, justify or deny the charges. (both for and against)
- Charge Letter
  - Must be given reasonable time — Rule 25 (d-1)
    - At least 4/5 days
  - Must have correct rules cited — Rule 25 (d-1) CR 93 (d-1)
    - Do not allow other Rules/Policies/Special Ins. to be entered
  - Must have a clear specification — Rule 25 (d-1)
    - Fair notice of what the case is about — CR 93 (d-1)
  - Copy of complaint letter must be provided — Rule 25 (d-2) CR 93 (d-2)
    - Emails, photos
- Time Limits
  - Major Offense — Serious Offense — Rule 25 (f) — CR 93 (e-1)
    - 10 days from Out of Service
      - First Knowledge - past practice. Intent of rule – when manager who can bring charges first knows.
  - Minor Offense — Rule 25 (g)
    - 20 days
- Documents Denial Requests
  - Sent letter to Hearing, Charging and Superintendent Officers
    - E.g. – Relevant witnesses, Mechanical report, Switch report
- Witnesses
  - All first-hand witnesses should be present
    - Carrier's responsibility
      - They are going to try and only bring in the witnesses that help their case.
      - If not on witness list – request in written
  - If important witness missing - recess

- All carrier employee witnesses should be present
- Non-employee witnesses can testify by telephone

- Telephone testimony
  - Acceptable due to arbitration precedence decisions
    - Usually for non-employees (passengers)
      - Carrier has a good faith obligation to try and get these witnesses to testify in person
    - Employee witnesses should be present since they are under Carrier control.
  - Still Object
    - Phone may distort transmission of hearing perception, affects Hearing Officer's ability to judge credibility in absence of demeanor, also questions the person's ID, or if they are using notes etc..
    - Watch out for 2 witnesses using same phone call, should be separate (probably listening to each other's testimony).
- Due Process
  - Carrier has the obligation to provide a fair and impartial trial at which they must develop all the facts which includes evidence that tends to explain, justify or deny the charges. (both for and against)
    - Violations of Due Process
      - Prejudgment
  - Already made decision to discipline
  - Take employee out of service before trial
  - Take employee out of service without a statement
  - Arbitrary and Discriminatory
    - Disparate treatment
      - Charged one employee and not another
      - Charge employees for who they are not what they did
  - Hearing Officer's Behavior/Misconduct – (Carrier employee who job is to only give the "appearance" of fair and impartial)
    - Must develop all the facts

        - Bias and interferes with Organization's ability to make a proper defense or present case.
        - Will not allow in evidence
        - Does not allow first hand witness to testify
        - Cuts off questions, interrupts
        - Ignores procedural objections or rejects them without any plausible reason
        - Allows Carrier witnesses to speculate, opinionate, but not Organization witnesses
        - Allows carrier to enter past history
    - CR only - Object to the fact that the hearing officer is prosecutor, judge and jury.
    - Amtrak only – Object to all charges, references, and audio that deals with the Q & A session.
        - Enter Walker's letter in which Amtrak agrees not to introduce the transcript of the Q & A in any formal investigation.
- Hearsay evidence
    - Evidence based not a witness's personal knowledge but on matter told him by another person.
    - Admissible – but should not carry much weight.
        - Still object – you cannot cross exam other person.

REQUESTING WITNESSES FOR AN INVESTIGATION

Upon receipt of a notice of hearing with, or without the listing of witnesses, It is suggested the representative write the following letter to the Carrier Charging Officer. It is further suggested this letter be mailed registered mail, in the event it becomes necessary to establish that the Charging Officer received this letter:

SAMPLE:

Dear Mr. _____ , Charging Officer:

I am in receipt of your letter of (date) wherein (Claimant) is charged with (Whatever). In order that we might properly defend and insure (Claimant name) a fair and impartial investigation we hereby request the following Company employees, which have direct information relating to the incident involving these charges, be made available at the hearing:

1.
2.
3.

Thank you for your consideration in this matter.

Respectfully submitted,

Joe Wonderful
UTU Local Chairman

At the investigation, if it is apparent the carrier has not brought in the witness requested, ask the Charging Officer (on the record) if the carrier intends to provide the witnesses requested in your letter dated _____ . In all probability the Charging Officer will state that these individuals do not have first hand knowledge, and there for were not called as a witness. At which time the Representative should lodge the following objection:

OBJECTION:

We object to the Charging Officer's refusal to provide the wittiness requested, and ask that our letter dated _____ be made a part of the record. A fair and impartial investigation is impossible if we are not allowed to examine all evidence relating to this incident.

During the course of the investigation develop testimony that establishes the individuals you requested as witness, do in fact have first hand knowledge of the incident under investigation. Then, when you are allowed to call your witness, request that _____ be made available, as there is testimony, which establishes they have first hand knowledge of the incident.

The Carrier may then ask if you want a recess to make these individuals available. At this time, the Representative should respond:

" The carrier is the moving party and in control of this hearing, we have properly requested these individuals be made available for this hearing, therefore, it is the carriers decision whether they wish to recess and make these individuals available as witnesses."

The charging officer may then indicate that the Organization will be responsible for any lost wages involved providing these individuals. At which time, the Representative should respond:

"The carrier has control over their employees, the Organization has no subpoena power to force these witnesses to be present, the carrier does. It is the carrier's responsibility to provide a fair and impartial hearing which develops all the facts."

In the event the carrier does not provide the witnesses requested, It is suggested that in your closing statement you once again object to the carrier not providing the witnesses requested. Then state as part of your closing statement: " Had the carrier provide witness _____, they would have testified…." Then state what you feel they would have said in testimony.

All objections and groundwork established for appeal must **BE ON THE RECORD.**

OBJECTIONS – DEFINITIONS - GENERAL COMMENTS

Evidence may be competent and yet be objectionable as hearsay, privileged material, irrelevant, etc.; for example, a document may be authentic but contain inadmissible hearsay statements. To be admissible, evidence must satisfy all possible grounds for objection.

An objection should be clear and timely. It should be made at the first available opportunity. Normally, it should be made immediately after the question has been asked.

EXAMPLES:

"Objection Incompetent.."

"Objection Hearsay."

"Objection Leading."

"I object. Irrelevant."

"I object. No proper foundation."

Specifically: The grounds for objection should be specified. If only a portion of proffered evidence is objectionable, or it is objectionable only concerning certain parties, the objection must so specified, otherwise, there is no error if it is overruled.

Multiple or omnibus objections such as "irrelevant, immaterial, and incompetent" should be avoided. Generally speaking, a multiple objection will not protect the record on appeal unless all of the grounds stated are sound.

Argument: Objections should be argued outside the hearing of the witnesses. Request that the witnesses be sequestered.

Reasons For Objecting Or Not Objecting:

For: 1) To exclude improper evidence; 2) to make a record for appeal; 3) to protect a witness from undue harassment.

Not. 1.) It may alienate the trier of the fact; this is especially true in jury cases; 2) there is danger of high-lighting harmful evidence; 3) negligible harm is threatened.

CROSS-EXAMINATION

Purposes Of cross-examination: To bring out additional facts or to impeach a witness.

Impeachment is the process of attacking the credibility of a witness. A witness can be impeached on cross-examination by questions relating to his accuracy of recollection, capacity to observe, impartiality, prior inconsistency of statements, and felony convictions, even though these matters were not inquired into on direct examination.

Latitude of Cross-Examination: Cross-examination on any issue is to allow cross-examination on any matter that logically tends to rebut an unfavorable inference which might be drawn from direct examination, that is, on any matter relevant to the subject matter of the direct examination. Generally speaking, the latitude of cross-examination is broader if the witness is 1) party to the action, 2) an expert, or 3) a witness against a defendant in a criminal case.

Leading Questions: Ordinarily, leading questions are allowed on cross-examination unless the witness is obviously friendly to the cross-examiner or his client.

"Why" Questions: He gives a witness an opportunity to inject otherwise inadmissible matters. Ordinarily, a cross-examiner should never ask a witness "why" he did something.

Form: "I object on the ground that this question exceeds the scope of direct examination."

"Objection. The question is beyond the scope of the direct testimony."

IMPEACHMENT

Definition: Impeachment is the act of questioning or discrediting the credibility of a witness. Impeachment can be predicated on many matters. These include 1) prior contradictory or ambiguous statements, 2) interest in the outcome of a case, 3) bias, 4) relationship to a party, 5) poor character for honesty or veracity (not bad character in general), 6) hatred, 7) friendship, 8) gratitude, 9) compensation received for testifying, 10) lack of opportunity to observe, and 11) lack of ability to observe or remember.

Contradictory Statement. It is not necessary to prove an unequivocal and totally contradictory statement in order to impeach a witness. A material variation is sufficient.

Memory Loss. If a witness claims memory loss, his prior statements concerning a matter may, if the loss appears to be feigned, be deemed to be inconsistent with his current testimony.

Failure to Mention. It is proper to show failure on the part of a witness to mention on a prior occasion material matter presently testified to by him, if it would have been natural for him to mention the material matter on the prior occasion.

Payment of Consideration: Bias may be demonstrated by showing that for whatever reason the other party has paid, promised to pay, or even hinted at paying to a witness, or on his behalf, money or other consideration. This includes money paid in settlement of a claim.

Form: "I object; this attempt to impeach the witness is improper because_____."

LEADING/SUGGESTIVE

Definition: A question that suggests to a witness an answer that the examiner desires is leading. The test is whether a reasonable person would get the impression that the examiner desires one answer rather than another.

A question that describes an incident in detail and asks if it happened that way, thus providing a natural inference in the form of the question that the questioner expects a specific answer, whether affirmative or negative, is a type of leading question.

Note: To avoid leading questions, begin questions with such words as "How ...", "What.....", "Who...", "Why...", "Where...".

If it appears that a question by the charging officer is leading, the representative should object before the question is finished or the facts will have been suggested to the witness who will be able to relate the suggested facts, even if the objection is sustained and the question is reframed.

Examples:

Suggestive. "Did she not put the money in her pocket?" Any question that begins in this manner is likely to be a leading question.

One alternative branch of a question is specific and detailed, and the other vague: "Was the sound like the scream of a woman in fear or was it otherwise?"

Cross-Examination: Leading questions are proper on cross-examination except when it is apparent that the witness is biased in favor of the cross-examiner's client.

Note: To ask leading questions, representative should begin questions with such phrases as "Isn't it correct...?" or such words as "Was ...", and "Is..."

Form: "I object on the ground that the question is leading.

OPINIONS/CONCLUSIONS

Example Of Admissible Opinions: A witness can testify about his own intent, motive, knowledge, or mental condition. (Whether he was depressed, angry, happy, etc.) Witnesses generally can testify concerning speed, distance, size, appearance, demeanor, sobriety, state of health, the identity of a person, amount, weight, and the nature of substances (smooth, rough, wet, granular, etc).

They also can testify to the existence or absence of signs of joy, excitement, nervousness, anxiety, disgust, surprise, embarrassment, sympathy, despondence, displeasure, satisfaction, anger, etc. Although a lay person cannot testify about what was on another's mind, he can testify about appearances.

Permissible Language: Testimony using such terms as "slow," "fast," and "pretty fast," has been held to be admissible.

Speculation: A witness may not give an opinion on matters that require guess or speculation. A witness's "understanding" is inadmissible because it may be based on conjecture.

Impression: A witness can testify to his impressions such as those concerning the substance of a conversation, if his memory is faint; again, a matter of weight rather than admissibility is involved.

Inadmissible Conclusions: Words that reflect conclusions having a legal significance, such as "agreed," "promised," "consented," and "fault," are objectionable unless the witness is relating a conversation in which these words were spoken.

Hypothetical Questions: They may be used as a technique to impart knowledge to an expert who lacks personal knowledge. Each assumed fact must be based on evidence that either has been or will be introduced. In the modern view, a hypothetical question need not state all of the pertinent evidence; it may be framed to reflect only the examiner's theory.

Form: "I object on the ground that 1) the question calls for an inadmissible opinion (conclusion).

SPECULATION

Definition: A witness may testify to facts based on his own personal knowledge, or, in some instances, he may give an opinion. In either event, he may not base his answer upon speculation. The following is an example of an improper question because it leads to speculation: "Is it possible, Mr. Jones, that there were other conversations?"

A lay witness can give his opinion only concerning matters he personally has perceived and that are within the common experience of non-experts speed and size for example. He may not base his opinion on ambiguous matters not within the common experience of lay persons; this is speculation.

An answer based on conjecture is a speculative answer.

Form: "I object on the ground that the question calls for speculation by the witness."

HEARSAY

Definition: Hearsay is testimony concerning what a person (other than the witness) said other than while testifying in court in the present proceeding, and is offered as proof of the truth of the matter asserted. It is excluded because it cannot be tested by cross-examination.

Knowledge: The witness must have had firsthand knowledge of the event when it occurred.

Form: "I object on the ground that the question calls for hearsay."

"Objection, The question calls for hearsay."

ARGUMENTATIVE

Definition: The purpose of the question is to persuade the trier of fact rather than to elicit information. The question calls for an argument in answer to an argument contained in the question; or it calls for no new facts, but asks the witness to agree to conclusions drawn by the questioner.

Form: "I object on the ground that the question is argumentative."

IRRELEVANT

Definition: Having no applications or effects in a specified circumstance.

Form: "I object on the ground that the question calls for an irrelevant answer."

MISQUOTING A WITNESS

Definition: A question that misstates what a witness has said is objectionable.

Form: "I object on the ground that counsel is misquoting the witness. What the witness stated was,'_____'."

NARRATIVE ANSWER

Definition: A question inviting a narrative type of answer is so broad, general, or indefinite, that it affords the witness an opportunity to inject inadmissible matter into his answer. Each question should limit the witness to a specific answer.

EXAMPLES:

"Tell us what everyone did."

"What happened the next day?"

"What occurred after Mr. Jones' arrival?"

"What do you know about this accident?"

Form: "I object on the ground that the question calls for a narrative answer."

ASKED AND ANSWERED

Definition: This objection is to a form of immateriality. It attempts to prevent a waste of time by unnecessary repetition and to avoid the giving of undue emphasis to particular portions of the evidence. It applies not only when an answer has been given, but also when the witness has stated that he does not know or remember the matter.

Exception: Repetitious questions may be permissible in an attempt to refresh the memory of a witness, to clarify a point, or, in cross-examination, to lay a foundation for impeachment by way of a prior inconsistent statement. Generally speaking, more liberality is granted repetitious questions on cross-examination.

Form: "I object on the ground that the witness has already answered that question."

IMMATERIAL

Definition: Evidence having slight relevancy is considered to be immaterial. Evidence that is relevant but has little probative value, at least not commensurate with the time required for its use, is immaterial; its bearing on the point in issue is too remote, uncertain, or cumulative to affect it significantly. Accordingly, the circumstances of each case determine whether particular evidence is immaterial.

Form: "I object on the ground that the question calls for an immaterial answer."

SELF-SERVING

Definition: Pursuing or seeking only for oneself needs.

Form: "Objection, your Honor. The question calls for self-serving testimony."

AMBIGUOUS AND UNINTELLIGIBLE

Definitions:

Ambiguous: Equivocal, uncertain, capable of being understood in two or more possible senses.

Unintelligible: Not capable of being understood by the witness.

Form: "I object on the ground that the question is (ambiguous) (unintelligible) in that _____."

"Objection, The question is (ambiguous) (unintelligible)."

ASSUMING FACTS NOT IN EVIDENCE

Definition: A question that assumes unproved facts to be true is objectionable, since it seeks to bring before the trier of fact, facts to which no evidence has been introduced. Further, it traps a witness into affirming the truth of the assumed fact without, in many cases, this being his intention.

Examples: The classic example is: "When did you stop beating your wife? Question when there has been no evidence that the witness has ever struck his wife.

"Did you know that ….?, Have you heard …?": This type of question, whether on direct or cross-examination, is likely to assume unproven facts.

Form: "I object on the ground that the question assumes a fact not in evidence."

INCOMPETENT

Personal Knowledge: A witness must have been present and have observed an event or heard the conversation he relates.

Form: "I object on the ground that this person is incompetent to be a witness because he has no personal knowledge concerning the matter.

DECLARANT'S RIGHTS

If any portion of a statement is admitted into evidence, then the whole statement is admissible.

HANDLING SPOTTER WITNESSES AT INVESTIGATION

Upon receipt of a notice of hearing with, or without the listing of a witness suspected to be a spotter, It is suggested the representative write the following letter to the Carrier Charging Officer. It is further suggested this letter be mailed registered mail, in the event it becomes necessary to establish that the Charging Officer received this letter

SAMPLE:

Dear Mr. _____ , Charging Officer:

I am in receipt of your letter of (date) wherein (Claimant) is charged with (Whatever). Your notice of investigation lists as witnesses the following:

1.
2.
3.

We are unfamiliar with witness Joe Spotter. In order that we might properly prepare our defense and insure (Claimant name) a fair and impartial investigation, we hereby request all of the background information available on this (these) witness (es), and any other Carrier witness (es) not listed in the Investigation notice. Such information should include but need not be limited to the following:

1. Age
2. Marital Status
3. Work History
4. Educational Background
5. Training
6. Criminal Record
7. Physical Appearance
8. Any relationship with Carrier Officers.

Please supply this information to the undersigned.

Respectfully submitted,

Joe Wonderful
UTU Local Chairman

At the investigation pursue questioning in the above areas. In all probability the Charging Officer will object to the line of questioning, and the Hearing Officer will not allow such questioning at which time the Representative should lodge the following objection:

OBJECTION:

Object to the Hearing Officer's refusal to allow this line of questioning. Witness Joe Spotter's credibility is the most important issue before us. A fair and impartial investigation is impossible if we are not allowed to explore his background. Implicit in the right to a fair and impartial investigation is the right to impeach the credibility of a witness.

If the Hearing Officer denies you the right to attempt to impeach their witness, during your closing statement enter any information you might have against the witness credibility at that time.

Example:

"At this time we reiterate our objection to not being allowed the right to impeach the Carriers witness. Had we been allowed this latitude we would have been able to establish that Witness Joe Spotter is:" (Trainmasters son in-law, convicted felon, etc.) Additionally, had the Carrier allowed this line of questioning, Witness Joe Spotter would have had the opportunity to correct any inaccuracies in this area."

Also, at this time make a request to enter any statements, police records, etc, that you have into the hearing as exhibits. To accomplish this the following is suggested.

"Mr. Hearing officer, at this time we request the following, which reads, (orally read the report, statement, etc.) be submitted as exhibits to this hearing."

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"Mr. Hearing officer, at this time we request the following, which reads, (orally read the report, statement, etc.) be submitted as exhibits to this hearing."

5306 OVERBROOK AVE.
PHILADELPHIA, PA 19131
JANUARY 26, 2004

MR. L. DePHILLIPS
DIVISION MANAGER – LABOR RELATIONS
900 SECOND STREET, N. E
WASHINGTON, D. C. 20002

DEAR MR. DePHILLIPS:

PURSUANT TO RULE 25 L OF THE UTU AGREEMENT, I WOULD LIKE TO APPEAL THE DECISION AND DISCIPLINE ASSESSED TO MR. DANIEL HIGGINS AT HIS RECENT TRIAL. I BELIEVE THE CARRIER DID A GRAVE INJUSTICE TO HIM.

SINCERELY,

CHARLIE YURA
LOCAL CHAIRPERSON
LOCAL 838

1936 Yorktown South
Jeffersonville, PA 19403
June 4, 2010

Mr. Frank Guadalupe
Amtrak – Charging Officer
NEC Service Operations
New York, NY 10001

RE: M. Buckley Case

Dear Mr. Charging Officer:

In connection with the charges of Mr. M. Buckley, it is necessary that you produce the following documents, and video tapes and/or make them available for my inspection at least 5 business days prior to the investigation so that I may prepare an adequate defense for a fair and impartial trial in this matter:

1 – Copies of the crew base and train platform video tapes for sign up and boarding of train # 2109 for May 21, 2010.

2 – Copies of Mr. Buckley's annual conductor reviews for the last 3 years.

Thank you for your consideration in this matter.

Sincerely,

Charlie Yura LC 838

cc: Hearing Officer

NATIONAL RAILROAD PASSE[illegible] CORPORATION
[illegible]0 Massachusetts Avenue, NE, Washington, DC 20002

April 11, 2005

Mr. A.L. Suozzo
General Chairman
United Transportation Union
1515 Market Street, Suite 708
Philadephia, PA 19102

Dear Mr. Suozzo:

When investigating major incidents, Amtrak is obligated to establish basic facts to prevent recurrence of the incident and to protect corporate assets. It is important for our employees to understand this obligation, and for managers to perform this task fairly and expeditiously. Our past performance in this area has been uneven.

During their FY05 management training, Transportation Department Managers will receive a module entitled, "Standardization of Major Incident Investigations." A copy of the elements of this module is enclosed. Major incidents are generally defined as an injury, derailment, sideswipe/collision, passenger train parting, grade crossing accident, trespasser strike/fatality, workplace violence incident, certain customer complaints, certain ADA or FDA related incidents, or any other incident as deemed necessary by the Vice President, Transportation or General Superintendent.

When required to investigate a major incident, the following steps will be taken by Transportation Department management:

1. Managers will interview all employees that may have information relevant to the incident.

2. During the initial interview, Managers will utilize a Question and Answer (Q&A) format, which may be recorded. If requested, a copy will be provided to the employee. Carefully thought out questions will be prepared in advance. Employees will not be required, to also "write a statement."

Managers will explain that the recording of the interview serves to protect the employee's interest as well as the company's. All Q&A's will be conducted professionally and employees will be treated with respect and dignity. Management training will emphasize consistency in the investigation of the major incidents and compliance with collective bargaining agreements. Please be advised that management will not introduce the transcript of the Q&A in any formal investigation.

I believe that this process will provide the major incident investigatory consistency sought, as we collectively strive to create a safe work environment. If you have any questions, please do not hesitate to contact me.

Sincerely,

E.V. Walker
Vice President, Transportation

Glennon Case

Facts, Preparation Questions

5306 Overbrook Ave.
Phila., PA 19131
July 9, 2004

Mr. Ed Walker
Vice President Transportation
Amtrak - Executive Offices 2E-139
60 Massachusetts Ave., N. E.
Washington, D. C. 20002

Dear Mr. Gunn:

Mr. Kevin Grant, Chief Safety Officer, in a phone conversation with Mr. Rich Blakeney, Legislative Representative, Local 838, UTU, on June 30th , refused a union request for a Job Safety Assessment (JSA) for riding the rear of P-42 Engines at Philadelphia, because the Operating Department deemed it unnecessary. Why have a Safety Department if the Operating Department dictates safety polices and decisions for the carrier. No matter have trivial a matter may seem, I believe it is paramount for the Safety Department to investigate an employee's concern. I also believe this particular matter is not trivial, since an employee is out of service for refusing an order by management to ride the rear for safety reasons.

Mr. Gunn, I believe you are committed to a safe workplace, but unfortunately your commitment has not filtered down to the Safety and Operating Departments. This issue has festered for over 10 years without a complete, proper investigation and resolution by the carrier.

Enclosed is a letter I sent Mr. Pesce 21 months ago and hand deliver to Mr. Sherlock 13 months ago and I am still waiting for a response.

Thank you for your consideration in this matter and if you want to attend Mr. Glennon's trial on Tuesday, July 13, 10 am, I would have no objection.

Sincerely,

Charlie Yura
Local Chairperson 838

CC: Mr. Ed Walker, Amtrak
Mr. Jim Brunkenhoefer, UTU
Mr. Tony Iannone, UTU
Mr. Al Suozzo, UTU

Gleanon Strategy

Prove he was not insubordinate due to safety reasons.

Safety is top priority on the RR

Prove being on the rear of P-42 for an extended time is hazardous

- Use pictures
- Grab iron
- Door handle – Savoy notice – locked
- Noise
  - Service Standards Manual
  - Call – Tom McCann – Amtrak Industrial Hygienist
  - Lack of proper communication with engineer
    - Conductor can't hear radio transmissions
- Heat
  - Standing right under radiator
  - Use GE manual
    - Don't stand near or under
  - Summertime – excessive heat

- Witnesses
  - Management
  - Try to call division superintendent – Pesce – send letter
  - Try to call safety/rule super – Strachen – send letter
  - Call Philly super – Sherlock
  - Road foremen
  - McCann – Hygienist
  - Safety department – Grant

  - Union – not safe
  - Yard crews
  - JJ, Jeese, Richie, KC, mechanical

Gleanon testimony - why

SHERLOCK

NAME, OCCUPATION, DUTIES, HOW LONG, WHAT DID DO BEFORE, ANY FIELD EXPERIENCE

DOES SAFETY HAVE TOP PRIORITY IN AMTRAK
DOES EMPLOYEE SAFETY HAVE A TOP PRIO0RITY

DO YOU HAVE ANY SAFETY TRAINING, ANY SPECIFIC SAFETY TRAINING WHEN IT COMES TO T & E PROBLEMS
IF THERE IS CONFLICT BETWEEN A SAFETY RULE OR A OPERATING RULE, WHICH SHOULD PREVAIL

GENERAL NOT SPECIFIC

IF AN EMPLOYEE REPORTS A SAFETY PROBLEM TO YOU OR ONE OF YOUR SUPERVISION, WHAT'S SUPPOSE TO HAPPEN, WHAT'S THE PROCESS

DO YOU REMEMBER LAST YEAR WHEN I HAND DELIVERED TO YOU A COPY OF A LETTER I SENT MR. PESCE THE YEAR BEFORE

DO YOU REMEMBER ME TELLING YOU THAT I NEVER RECEIVED AN ANSWER AND THAT THE RIDING OF THE P 42 WAS A SAFETY PROBLEM

YOU WOULD GET ME AN ANSWER WITHIN A WEEK FROM THE STRACHEN GROUP

DID YOU EVER GET AN ANSWER OR DID I

DAVIS QUESTIONS

NAME, OCCUPATION, HOW LONG A ROAD FOREMAN, HOW LONG IN PHYLA, HOW LONG BEFORE THE INCIDENT, QUALIFIED ON NORAC, WHEN WAS THE LAST TIME YOU TOOK THE NORAC TEST, QUALIFIED ON THE CHARACTERISTICS OF ZOO INTERLOCKING

WHAT KIND OF SAFETY TRAINING DID YOU RECEIVE WHEN YOU BECAME A ROAD FOREMAN?
WERE TRAINED BY THE SAFETY DEPT.
ARE YOU A TRAINED SAFETY COMPLIANCE OFFICER OR YOUR NOT TRAINED
WHAT DID THEY TEACH YOU TO DO IF AN EMPLOYEE COMES TO YOU WITH A SAFETY PROBLEM OR ISSUE
DO YOU REPORT IT TO THE SAFETY DEPT., YOUR SUPERIORS
IS YOU FAMILIAR WITH FEDERAL LAW TITLE 49, UNITED STATES CODE 20109 P.145
ARE YOU FAMILIAR WITH THE NORAC RULES, SERVICE STANDARDS

P42 DID YOU REPORT A PROBLEM TO THE SAFETY DEPT. SUPER.
HOW DO YOU KNOW ITS SAFE, ANY PROOF, ANYTHING IN WRITING FROM YOUR SAFETY OR GE STATING THAT IT IS SAFE TO BE BACK ON THE REAR FOR 1 HOUR AT A TIME.

ARE YOU FAMILIAR WITH P-42
IN THE RADIATOR COMPARTMENT, WHERE IS A GRAB IRON
IS A DOOR HANDLE A SAFETY APPLIANCE
GRAB IRON TO GET ON AND OFF – THERE IS IN THE CAB
FAMILIAR WITH COMPRESSOR NOISE
DOES THIS AFFECT RADIO COMMUNICATION
SAFE COURSE
HEAT
VENTILATION – IS IT THE SAME AS THE CAB

DID YOU ASK ANYONE IF THERE WERE ANY SPECIAL ARRANGEMENTS FOR RIDING THE REAR OF P42
WERE YOU GIVEN ANY ADVICE ON THIS ISSUE WHEN YOU CAME TO PHILA
DID YOU ASK ANYONE IF THERE WAS ANY SPECIAL ARRANGEMENTS

TALK ABOUT THE INCIDENT ITSELF
MR. GLENNON EXPLAIN THAT IT WAS UNSAFE TO RIDE THE REAR OF THE P 42
YOU TOLD HIM HE HAD TO RIDE BACK THERE

DID YOU GIVE ANY ALTERNATIVE TO RIDING BACK THERE, FOR EXAMPLE WALKING IT BACK.

MARKED OFF BEFORE HE WAS INSUBORNATE, HE SAID THAT IT WAS UNSAFE AND HE MARKED OFF

LOOK AT OUT OF SERVICE NOTICE

ARE YOU FAMILIAR WITH THE GE MANUAL FOR THE P42

MC CANN QUESTIONS

POSITION, DUTIES, HOW LONG HAVE YOU BEEN THERE

WHAT KIND OF TRAINING AND THIS SPECIALIZED, SOMETHING THAT THE OPERATING MANAGERS ARE NOT TRAINED IN

FAMILIAR WITH NORAC RULES, THE CONDUCTORS SERVICE STANDARDS MANUAL
SAFETY TOP PRIORITY
IF THERE IS CONFLICT BETWEEN A SAFETY RULE OR A SAFETY RULE, WHICH SHOULD PREVAIL
APPROX. 14 MONTHS AGO, YOU RODE WITH ME ON A WYE MOVE
THERE WAS AN INDUSTRIAL HYGIENIST WITH YOU
THE REASON YOU CAME WAS BECAUSE OF COMPLAIN YOU RECEIVE FROM ME CONCERNING THE P42

TOLD YOU THAT THE UNION HAD COMPLAINED FOR YEARS ABOUT THE CONDITIONS IN THE REAR AND NOTHING HAD BEEN DONE

DID YOUR RESEARCH YOUR FILES, E.G. MR. MANGER

YOU GOT ON THE ENGINE, I EXPLAINED THE SAFETY PROBLEMS THAT WE HAD
THE LACK OF A HANDHOLD OR GRAB IRON
SHOW YOU THE ELECTRICAL CONDUIT MOST CONDUCTORS HUNG ONTO
DI D YOU REALIZE THAT CONDUIT CONTAINS 75-85 VOLTS OF DIRECT CURRENT
SHOWN THE BACK WINDOW, NO WINDSHIELD WIPER, DIRTY, SCRATCHED ETC
THERE WAS NO REAL VENTILATION IF THE DOORS WERE CLOSED
EXCESSIVE HEAT
RADIATOR ABOVE YOUR HEAD

BAD COMMUNICATION, COULD NOT HEAR RADIO TRANSMISSION WHEN THE COMPRESSOR WAS WORKING
AS MATTER OF FACT, WHEN WE WERE WYING CETC CALLED AND CHANGED THE MOVE AND WE DID NOT HEAR.
LADDER AND THE STEP AND NO GRAB IRON AT DOORS TO ASSIST IN GETTING OFF NO SWITCHING STEP

CRASH WORTHINESS SAME AS CAB
WINDOW MADE WITH THE SAME GLAZING AS THE CAB
HEARING PROTECTION THE SAME 90DB

COMPLIED A REPORT
RECOMMENDED CHANGES

SPECIFICALLY GRAB IRONS
SUPPOSEDLY AMTRAK HAS MADE A MECHANICAL REQUEST FOR GRAB IRONS
E-MAILS P42

IS A LOCKED DOOR HANDLE A SAFETY APPLIANCE
ARE GRAB IRONS SAFETY APPLIANCE
IS A LOCKED DOOR HANDLE AN APPROVED FRA SAFETY APPLIANCE
MR. SAVOY EVER CONTACT YOU OR THE SAFETY DEPARTMENT, BEFORE PUTTING OUT THIS MEMO FOR DISTRIBUTION

IF THERE WAS A SUDDEN OR EMERGENCY STOP OR COLLISION, CAN ONE HAND ON A DOOR HANDLE SUPPORT YOU

GE MANUAL
FAMILIAR WITH THE P 42 MANUAL
DEFINITION TROUBLESHOOTING

CAN YOU PRODUCE ANY DOCUMENT FROM GE WHICH WOULD ALTER THE GE MANUAL, SUPPLIED BY
THE FRA

WILSON QUESTIONS

NAME, AGE, OCCUPATION, HOW LONG ON THE RR, POSITION, HOW LONG HAVE WORKED AT RACE ST. IN THE YARD
DUTIES

FAMILIAR WITH P 42
HOW LONG HAVE YOU BEEN WYING ENGINES, F 40, P 38, P 40, AND P 42

ACCORDING TO THE GE MANUAL THE REAR OF A P 42 IS CONSIDERED THE LONG HOOD AND CAB END IS CONSIDERATE THE SHORT HOOD
IS IT SAFE TO RIDE IN THE REAR OF A P 42
WHY NOT
DO YOU FEAR FOR YOUR LIFE RIDING BACK THERE
COULD YOU SURVIVE A CRASH/COLLISION

OVER THE LAST TEN YEARS HAVE YOU COMPLAINED TO MANAGEMENT ABOUT THIS SITUATION
TO WHO HAVE YOU COMPLAINED TO OVER THE YEARS, BISHOP, FULLMER, BAILEY, ROBUSTO, LIGHTNER, TOADVINE ETC ALL BOSSES
HAS THE SAFETY DEPARTMENT OVER THE LAST 10 YEARS ADDRESSED ANY OF THESE SAFETY PROBLEMS – EAR PHONES - DID NOT WORK

SINCE MANAGEMENT COULD NOT FIX THESE PROBLEMS, YOU WERE TOLD IT WAS OK TO RIDE IN THE CAB.
WHERE DID YOU RIDE OVER THE LAST 10 YEARS
CHANGED ABOUT 6 MONTHS AGO
HAVE YOU EVER COMPLAINED ABOUT SAFETY WHEN THE REAR RADIATOR COMPARTMENT IN THE LAST 6 MONTHS
WHO TO – SAVOY, ETC

HAS THE SAFETY DEPARTMENT EVER PUT OUT ANYTHING IN WRITING THAT'S SAFE TO RIDE IN THE REAR?

WHILE RIDING IN THE CAB, CAN YOU COMPLY WITH THE RESTRICTING SPEED CONDITIONS

IS IT SAFE TO OPERATE FROM THE CAB FOR REVERSE MOVES

NAME, AGE, OCCUPATION, HOW LONG ON RR, QUALIFIED

HAVE YOU EVER BEN DISCIPLINED

DOES MANAGEMENT USE TO POST AND TEACH ALL NEW EMPLOYEES

WERE YOU ON AN EVALUATION COMMITTEE, WITH MANAGEMENT, TO ASSESS NEW QUALIFYING CONDUCTORS? DID HE NEED MORE TRAINING

ARE YOU NOW WORKING CYP 1, YARD HERE IN PHILA., CONTINUOUSLY 18 YEARS IN YARD

ANYTIME A CONDUCTOR OR ENGINEER MUST QUALIFY ON PENN AND ZOO INTERLOCKING, THEY ARE SENT TO YOU TO RIDE WITH

TOLD BY THE RULES DEPARTMENT

SAFE TO SAY THAT YOU HAVE THE RESPECT AND CREDIBILITY WITH MANAGEMENT

YOU ARE ALSO VICE CHAIRMAN 838

TALK ABOUT THE P 42

ARE P 42 SAFE TO RIDE IN THE REAR
EXPLAIN - PICTURES, EMAILS, GE MANUAL

DOES THE REAR HAVE THE SAME SAFETY STANDARDS AS THE CAB
EXPLAIN

PAST PRACTICE, SAFE IN THE CAB

HAVE YOU EVER COMPLAINED TO MANAGEMENT ABOUT THE CONDITIONS

WHO, WHAT, WHEN, WHERE, WHY

GLENNON TESTIMONY

I TOLD THEM IT WAS UNSAFE AND HAZARDOUS TO RIDE IN THE REAR

UNDER FEDERAL LAW I HAVE A RIGHT TO REFUSE IF MY HEALTH IS AT RISK

I WAS NOT INSUBORDINATE, I MARKED OFF SO THAT I WOULD NOT BE INSUBORDINATE

NAME, AGE, OCCUPATION, HOW LONG ON RR, QUALIFIED CONDUCTOR, HOW LONG, MARRIED, KIDS

ON THE DAY WHEN THIS INCIDENT HAPPENED
WHAT JOB, CREW, JOB BRIEFING
WHAT WAS THE MOVE, WYE A ENGINE AND COUPLE TO TRAIN #
ON 2 TRACK AT ZOO
WHERE WERE YOU LOCATED
LOOK OUT THE MIRROR FOR (RESTRICTING RULE)
SAW A BARRICADE, WE STOPPED THE TRAIN
WHAT HAPPENED
DID THEY TELL YOU THAT IT WAS SAFE, YOU COULD BE SERIOUSLY INJURED, RIGHT UNDER THE LAW
DID YOU TELL THEM THAT THE GE MANUAL
COULD NOT COMMUNICATE PROPERLY, NO GRAB IRONS, EXCESSIVE HEAT AND POOR VENTILATION

ORDERED GO BACK
CALLED THE CREW DISPATCHERS

ISSUE ABOUT LAST WEEK
TELL THEM IT WAS UNSAFE AND ABOUT YOUR CONCERNS, YOU WERE REPORTING AN UNSAFE SITUATION AND **(THAT YOU WERE NOT GOING TO RIDE UNLESS THE SITUATION WAS FIXED)**
DURING THE WEEK
DID ANYONE FROM MANAGEMENT COME OR TALK TOP YOU ABOUT YOUR CONCERNS, FROM THE SAFETY DEPARTMENT.
YOU FOUND OUT WHAT THE GE MANUAL SAID,
YOU FOUND OUT ABOUT THE FEDERAL LAW

DO YOU BELIEVE THAT YOU ACTED IN A REASONABLE WAY AND IN GOOD FAITH

YOU WERE NOT JUST TRYING TO GIVE THE BOSSES A HARD TIME (AFRAID, TEEL ME ITS SAFE, PUT IT IN WRITING FROM THE FRA OR THE SAFETY DEPARTMENT OR GE THAT IT IS SAFE TO RIDE BACK FOR AN HOUR

CLOSING STATEMENT

THEMES

MERITS OF THE CASE WERE NOT PROVEN

RECORD WILL PROVE THAT MR. GLENNON WAS NOT GUILTY OF THE CHARGES THAT MR. GLENNON WAS NOT INSUBORNDINATE THAT IN FACT MR. GLENNON MARKED OFF " ORDERED TO DO UNSAFE ACT ", SO AS NOT TO BE INSUBORDINATE

TESTIMONY / OUT OF SERVICE NOTICE PROVE THIS

NOTWITHSTANDING THE ORGANIZATION'S POSITION THAT MR. GLENNON WAS NOT INSUBORDINATE, MR. GLENNON HAS THE RIGHT UNDER FEDERAL LAW TO REFUSE WORK WHEN CONFRONTED WITH A HAZARDOUS CONDITION. HE ACT IN GOOD FAITH AND REASONABLE MANNER AND HE GAVE THE CARRIER A SAFE AND REASONABLE ALTERNATIVE BY RIDING IN THE CAB, WHICH WAS PROVEN BY THE FACT THAT HIS CREW HAD JUST PASSED A BARRICADE TEST, REQUIRED BY THE FRA.

TESTIMONY PROVED THAT THE REAR OF A P 42 IS INDEED UNSAFE AND HAZARDOUS TO YOUR HEALTH

NO GRAB IRONS, NO SAFE HANDHOLDS
POOR COMMUNICATIONS
EXCESSIVE NOISE, EXCESSIVE HEAT, HOT RADIATOR OVER YOUR HEAD
POOR VENTILATION
REAR WINDOW NOT OF THE SAME GLAZING STANDARDS, NO WINDSHIELD WIPER

MANAGEMENTS CULPABILITY THE CARRIER HAS KNOWN FOR AT LEAST 10 YEARS OF THE UNSAFE CONDITIONS ASSOCIATED WITH REARING THE REAR OF A P 40 –P42, HAS DONE NOTHING. THEY HAVE NEVER ADDRESSED AND IGNORED IT

THE TWO MANAGERS WERE NOT APPRISED OF THE CIRCUMSTANCES SURROUNDING THE HISTORY AND HAZARDOUS BY THEIR SUPERIORS AND THEY THEMSELVES NEVER DID THE RIGHT THING BY FINDING OUT OR REPORTING THE SAFETY ISSUE THAT HAS LED US HERE.

SAFETY IS SUPPOSED TO BE AMTRAK'S TOP PRIORITY; THE EVIDENCE PROVES THAT IS NOT TRUE ETC.

5306 OVERBROOK AVE.
PHILA., PA 19131
AUGUST 19, 2004

MS. B. J. BLAIR
DIVISION MANAGER – LABOR RELATIONS
900 SECOND STREET, N. E.
WASHINGTON, D. C. 20002

RE: GLENNON APPEAL

DEAR MS. BLAIR:

THE ORGANIZATION WOULD LIKE TO APPEAL THE DECISION AND THE DISCIPLINE IMPOSED UPON MR. EDWARD GLENNON BASED ON THE FOLLOWING FACTS AND ARGUMENTS:

PROCEDURAL OBJECTIONS:

MR. GLENNON WAS DENIED A FAIR, FULL AND IMPARTIAL TRIAL BECAUSE THE CARRIER FAILED TO PRODUCE THE COMPANY WITNESSES REQUESTED BY THE ORGANIZATION. THE CARRIER HAS THE DUTY TO DEVELOP THE TRUTH BY ESTABLISHING ALL RELEVANT FACTS, BOTH FOR AND AGAINST THEM. THE CLAIMANT'S ABILITY TO PROVE HIS CASE WAS GREATLY HINDER BY THE WITNESSES' ABSENCE. THE CARRIER BY REFUSING TO ALLOW COMPANY WITNESSES TO APPEAR, CAPRICIOUSLY SHIFTED THE BURDEN OF PROOF TO THE CLAIMANT. THE WITNESSES IGNORED THE ORGANIZATION WHEN IT TRIED TO CALL THEM AS WITNESSES. THE ORGANIZATION FIRMLY BELIEVES THAT WITNESSES, SUCH AS MR. THOMAS Mc CANN, HAD RELEVANT, FIRST HAND KNOWLEDGE OF THE SAFETY AND OPERATING PAST PRACTICE OF THE P- 42 ENGINE. MR. Mc CANN, NEC SAFETY OFFICER WOULD HAVE TESTIFIED TO THE DANGER AND HAZARDS OF THE ENGINE. MR. MANGER, ALSO A FORMER SAFETY COMPLIANCE OFFICER, WOULD HAVE TESTIFIED ABOUT DANGERS AND THE COMMUNICATION PROBLEMS WHILE OPERATING FROM THE REAR OF THE ENGINE AND THE SAFETY DEPARTMENTS FAILURE TO ADDRESS THESE DANGERS. MR. STRACHEN WOULD HAVE TESTIFIED TO PAST OPERATING PRACTICES AND TO OPERATING RULES. MR. PEASCE AND MR. SHERLOCK WOULD HAVE TESTIFIED THAT THE ORGANIZATION HAS BEEN COMPLAINING ABOUT THE SAFETY OF THE ENGINE.

THE CARRIER ALSO FAILED TO PRODUCE THE PHONE CONVERSATION OR THE TAPE TRANSCRIPT OF THE CLAIMANT'S CONVERSATION WITH CREW MANAGEMENT.

MERITS:

THE ORGANIZATION FIRMLY BELIEVES THAT THE RECORD PROVED THAT THE REAR OF A P-42 IS INDEED HAZARDOUS AND THAT MR. GLENNON WAS WITHIN HIS FEDERAL RIGHTS TO MARK OFF FOR HIS OWN SAFETY. THE ORGANIZATION BELIEVES THAT MR. GLENNON WAS NOT INSUBORDINATE, THAT IN FACT HE MARKED OFF " ORDERED TO AN UNSAFE ACT ", NOT TO BE INSUBORDINATE. THE ORGANIZATION ALSO BELIEVES THAT MR. GLENNON DID NOT VIOLATE RULE 116, BECAUSE HE WAS ON THE LEADING END OF THE MOVEMENT PROVEN BY THE FACT NOT ONLY THAT MR. GLENNON'S CREW PASSED THE BARRICADE TEST BUT THAT RULE 116 APPLIES TO ALL MOVES, INCLUDING LONG HOOD GP-7 (PUMPKIN), WHERE NO ONE HAS TO BE ON THE FRONT PLATFORM.

THE RECORD PROVED THAT SAFETY IS OF FIRST IMPORTANCE AND IN CASE OF DOUBT THE SAFE COURSE MUST BE FOLLOWED. (NORAC RULE S)

TESTIMONY BY MR. WILSON AND MR. McCOLLUM, BOTH 30 PLUS YEAR EMPLOYEES, PROVED THAT IT IS DANGEROUS TO ONE'S SAFETY TO RIDE IN THE REAR OF THE P-42. DANGERS INCLUDE NO GRAB IRON, ELECTRICAL EQUIPMENT, EXCESSIVE HEAT, HOT RADIATOR, POOR VENTILATION AND LOUD COMPRESSOR NOISE TO NAME A FEW.

THE CARRIER HAS NOTHING IN WRITING TO STATE THAT IT IS SAFE IN THE REAR OF A P-42.

THERE ARE NO SAFETY APPLIANCE GRAB IRONS ON THE REAR OF THE P-42.

THE CARRIER'S SAFETY DEPARTMENT AND MANGERS RECOGNIZE THE SAFETY PROBLEM OF NO GRAB IRONS, WHICH WAS ESTABLISHED THROUGH THE CARRIER'S OWN E-MAILS.

NUMEROUS SAFETY RULES MUST BE VIOLATED WHEN RIDING THE REAR OF THE P-42.

MR. MAZEIKA, CARRIER WITNESS, HAD LIMITED EXPERIENCE IN T & E SERVICE AND HAS NO SAFETY TRAINING.

MR. MAZEIKA ALSO INCREDIBLY TESTIFIED THAT ANY STATIONARY OR IMMOVABLE OBJECTS CREATES A FIRM HANDHOLD.

MR. MAZEIKA TESTIFIED THAT SAFETY RULES DO NOT HAVE PRECEDENT OVER OPERATING RULES.

MR. MAZEIKA IGNORES MR. GLENNON 'S WARNING FROM THE WEEK BEFORE CONCERNING THE ENGINE'S SAFETY. MR. MAZEIKA ALSO FAILED TO NOTIFY THE SAFETY DEPARTMENT OR HIS SUPERVISORS OF THE SAFETY COMPLAINT.

THE CLAIMANT'S OUT OF SERVICE NOTICE DID NOT STATE THAT HE WAS INSUBORDINATE.

TESTIMONY BY MR. WILSON AND MR. McCOLLUM ESTABLISHED A PAST PRACTICE THAT EMPLOYEES FOR SAFETY REASONS COULD AND DID RIDE IN THE CAB OF THE ENGINE, WHEN MAKING REVERSE MOVES WITH P-42'S.

TESTIMONY BY MR. WILSON PROVED THAT THE CARRIER IS ARBITRARILY ENFORCING RULE 116 ON P-42'S AND NOT OTHER ENGINES SUCH AS GP-7'S, PUMPKINS.

FEDERAL LAW ALLOWS AN EMPLOYEE TO REFUSE WORK WHEN CONFRONTED BY HAZARDOUS CONDITIONS.

MR. GLENNON FIRMLY BELIEVED THAT IT WAS AND IS UNSAFE IN THE REAR OF A P-42.

MR. GLENNON MARKED OFF " UNSAFE " INSTEAD OF REFUSING MR. MAZEIKA'S DANGEROUS ORDER.

MR. GLENNON DID NOT VIOLATE RULE 116 BECAUSE HE WAS ON THE LEADING END OF THE MOVEMENT IN THE CAB.

MR. GLENNON'S CREW PASSED THE BARRICADE TEST AND RULE D.

HEARING OFFICER DECISION:

THE HEARING OFFICER IS A CONTRACT OFFICER, WHOSE EMPLOYMENT IS BASED ON HIS FAVORABLE DECISIONS FOR THE CARRIER, THEREFORE HE WAS INHERENTLY BIAS IN HIS DECISION AGAINST THE CLAIMANT. THE ORGANIZATION CITES THE FIRING OF THE HEARING OFFICER WHO HELD THE FAMULARE CASE.

HEARING OFFICER FAILED TO ADDRESS THE PROCEDURAL OBJECTION CONCERNING THE REQUESTED WITNESSES. BY IGNORING RELEVANT WITNESSES, HE DENIED THE CLAIMANT HIS DUE PROCESS AND AGAIN DEMONSTRATED THE HEARING OFFICER'S BIAS AGAINST THE CLAIMANT.

THE HEARING OFFICER IS NOT A SAFETY EXPERT, WHO HOWEVER ACCEPTED AT FACE VALUE, MR. MAZEIKA 'S ASSURANCES, WHO HIMSELF ADMITS THAT HE NEVER HAD ANY SAFETY TRAINING, THAT THE REAR OF A P-42 IS SAFE WITHOUT ANY PROOF. MR. MAZEIKA CREDIBILITY FAILED WHEN HE TESTIFIED THAT A STATIONARY OBJECT CONSTITUTES A FIRM HANDHOLD AND THAT AN ELECTRICAL CONDUIT CONTAINING 75 VOLTS IS A SAFE HANDHOLD. THE CARRIER NEVER ENTERED ANY SUBSTANTIAL OR SUBSTANTIATE EVIDENCE TO PROVE A SAFE REAR COMPARTMENT. TESTIMONY BY THE ORGANIZATION'S WITNESSES, MR. WILSON AND MR. McCOLLUM, PROVED OTHERWISE. 30 PLUS YEARS OF SAFE RAILROAD EXPERIENCE FAR OUTWEIGHS MR. MAZEIKA'S 4 MONTHS OF EXPERIENCE, ANY DAY. THE HEARING OFFICER ALSO FAILED IN HIS OBLIGATION TO LEARN THE TRUTH BY FAILING TO REQUEST FROM THE CARRIER A SAFETY ASSESSMENT OR A SAFETY DEPARTMENT WITNESS.

THE HEARING OFFICER FAILED TO UNDERSTAND THAT THE SAFETY RULES ARE GENERAL AND APPLY TO ALL WORK DUTIES, PERFORMANCES AND SITUATIONS. THE HEARING OFFICER TRIES TO INFER THAT A SPECIFIC RULE MUST OR MUST NOT APPLY TO ADDRESS A SPECIFIC HAZARD, SUCH AS THE P-42. IT IS RIDICULOUS TO THINK THAT THE CARRIER SHOULD HAVE SAFETY RULES FOR EVERY SPECIFIC TYPE OF EQUIPMENT THE CARRIER OWNS. IT IS ALSO ILLOGICAL TO HAVE A SPECIFIC RULE THAT STATES YOU MUST USE A HANDHOLD FOR IT'S DESIGNATED PURPOSE AND THEN INSTRUCT EMPLOYEES IN OTHER SITUATIONS TO IGNORE THE RULE AND USE A DOOR HANDLE IN THE ABSENT OF ONE. THE HEARING OFFICER ALSO FAILED TO UNDERSTAND THAT MEMOS ARE NOT PROPER INSTRUCTION FOR CREWS UNDER THE NORAC RULE BOOK.

THE HEARING OFFICER FAILS TO UNDERSTAND THEN DISMISSES THE IMMINENT DANGERS IN THE REAR OF A P-42 ENGINE. HE BELIEVES THAT PROPER CARE AND SAFE PROCEDURES ELIMINATE THE DANGERS. WHAT THE HEARING OFFICER FAILED TO REALIZE IS THAT ONE MUST HAVE PROPER SAFETY APPLIANCES IN ORDER TO FOLLOW PROPER CARE. TESTIMONY PROVED THAT IS NOT THE CASE ON THE REAR OF A P-42.

THE HEARING OFFICER ADMITS THAT THE REAR OF P-42 COULD BE DANGEROUS, BUT DISREGARDS THE DANGER AND STATES THAT THE DANGER IS NOT THE ISSUE. THE ORGANIZATION AND MR. GLENNON FIRMLY BELIEVE THAT THE DANGER IN THE REAR OF A P-42 IS MOST CERTAINLY THE ISSUE.

THE HEARING OFFICER DISMISSES FEDERAL LAW CONCERNING REFUSAL ON SAFETY GROUNDS UNDER THE FALSE PREMISE THAT OTHER EMPLOYEES HAD PERFORMED THE WORK. THE FACT THAT OTHER DID IT, DOES NOT ANSWER THE

QUESTION OF SAFETY. PLENTY OF PEOPLE DRIVE UNDER THE INFLUENCE AND DO NOT HAVE AN ACCIDENT, BUT THAT DOES NOT MAKE IT SAFE TO DRIVE WHILE DRINKING.

THE HEARING OFFICER JUMPED TO THE UNREASONABLE AND FALSE CONCLUSION THAT ORGANIZATION WITNESS MR. McCOLLUM, KNOWINGLY ALLOWED EMPLOYEES TO VIOLATE NORAC RULES, THEREBY DISCREDITING HIS TESTIMONY. DURING MR. McCOLLUM'S YARDMASTER SERVICE IT WAS NOT ONLY LEGAL, BUT ALSO THE ESTABLISHED PAST PRACTICE TO RIDE IN THE CAB OF A P-42 WHEN MAKING REVERSE MOVES. TESTIMONY BY MR. WILSON COLLABORATES PAST PRACTICE OF OVER 9 YEARS. IF ANYBODY'S CREDITABILITY SHOULD BE DISCREDITED IT'S THE HEARING OFFICER'S.

THE HEARING OFFICER FALSELY BELIEVES AND CONCLUDES THAT HE IS A NORAC RULE EXAMINER, WHO CAN INTERRUPT THE MEANING OF RULE 116. THE HEARING OFFICER WOULD HAVE BEEN BETTER PREPARED FOR THIS ROLE IF HE HAD NOT HINDERED THE ORGANIZATION'S ATTEMPT TO EXPLAIN RULE 116'S APPLICATION AND ADAPTATION TO GP-7 ENGINES, PUMPKINS. THE ORGANIZATION PROVED BY MR. WILSON'S TESTIMONY THAT THE CARRIER HAS ARBITRARILY ENFORCED RULE 116 ON THE REAR OF-42'S AND NOT ON THE FRONT OF GP-7'S. IF THE CARRIER WANTS TO MODIFY A RULE, IT SHOULD BE DONE BY SPECIAL INSTRUCTIONS, NOT BY A CONTRACT HEARING OFFICER OF AN OFFICE MEMO.

PURSUANT TO THE ABOVE FACTS, ARGUMENTS AND TESTIMONY, THE ORGANIZATION BELIEVES THE CARRIER'S GUILTY DECISION SHOULD BE OVERTURNED. THE CLAIMANT'S DISCIPLINE SHOULD BE EXPUNGED FROM HIS RECORD AND HE SHOULD BE MADE WHOLE FOR ALL LOST EARNINGS.

SINCERELY,

CHARLIE YURA 838

Claim Introduction

Submitting penalty time cards is the main method of enforcing our agreements. The claim process is also used when progressing non-dismissal discipline case for most of our properties in our General Committee.

Our committee has seen a decline in penalty time cards due to a number of reasons, chief among these, is the fact that most employees believe it is a waste of time to submit penalty cards because the length of time it takes to run or they believe the union will not get them paid anyway.

Unfortunately, they are right concerning the time and backlog in time claim arbitration, but that should not stop employees from progressing time card when the carrier violates our agreements, otherwise the carriers will see fit to do anything they want at any time they want without penalty. It is very important that you as a local chairman stress upon your members to submit time cards and equally important for you to progress penalty time cards when they do submit them.

Most of the claim clauses/rules used in our committee are based on the Conrail (Rule 91) and the Amtrak Rules (Rule 24) clauses. It is vital that all local chairmen understand the provisions and time limits contained in your respective claim rule. In the following pages are some examples of claim listing and joint submissions for your reference.

Additionally, please refer to the Claim Booklet provided which gives you a step by step explanation of the time limits mandated by the Conrail or Amtrak agreement and actual examples on how to list claims and joint submissions.

Amtrak Submission Examples

Dear New Local Chairperson,

Enclosed are a number of Joint Submissions, Ex Parte Submissions, Discipline Joint Submissions and form letter examples, which I hope you will find useful in your new position.

Please remember, you can write up your submissions whatever way is best for you. These are only one Local Chairperson's examples. The key is to make sure everything is included into the record.

Sincerely,

Charlie Yura
Vice General Chairperson GO - 769

Sean Smalley – LC 816A
5014 Virginia Ave.
Harrisburg, PA 17109 - 5540
Date:

Ms. Valorie Giulian
Manager – Field Offices
Labor Relations
Chicago, IL 60661

Dear Ms. Giulian:

In accordance with Rule 24, please list the following case for discussion at the next monthly meeting.

Claimant: Crew: Date:

Statement of Claim:

Statement of Facts:

Rule Involved:

Sincerely,

Sean Smalley
Local Chairperson – 816A

UTU/SMART File #_____

Discussion Date: _____

Mr. Charlie Yura
1936 Yorktown South
Jeffersonville, PA 19403
June 4, 2010

Ms. Valorie J. Giulian
Division Manager – Labor Relations
900 Second St, N. E.
Washington, D. C. 20002

Dear Ms. Giulian:

I request a Joint Submission for case # MID-UTU-NEC- on behalf of Mr. .

Facts:

The Claimants are Philadelphia Crew Base assistant conductors, who submitted, CMS denied these claims.

Organization Position:

The Organization believes the Claimants are entitled to made whole for the dates in question. The Organization believes the Carrier arbitrarily and capriciously violated the agreement for its own unscrupulous gain.

The Organization firmly believes

The Carrier's position is without merit because

Pursuant to the above arguments the Organization believes the claimant should be made whole for the date in question.

Sincerely,

Charlie Yura LC 838

Mr. Charlie Yura
1936 Yorktown South
Jeffersonville, PA 19403
July 22, 2010

Ms. Valorie J. Giulian
Division Manager – Labor Relations
900 Second St, N. E.
Washington, D. C. 20002

Dear Ms. Giulian:

I request a Joint Submission for case # MID-UTU-NEC- 7988/0510 on behalf of Mr. G. Weaver.

Facts:

The Claimant is a New York Crew Base conductor, who submitted a penalty time card for lost earnings (CNW 701) under Rule 10, when the carrier denied him the right to displace onto another assignment when his assignment was annulled on January 18, 2010, the federal Martin Luther King holiday. CMS denied this claim.

Organization Position:

The Organization believes the Claimant is entitled to be made whole for the date in question. The Organization believes the Carrier arbitrarily and capriciously violated the agreement for its own unscrupulous gain.

The Organization firmly believes that the carrier violated Rule 10 a, when it refused the claimant the right to displace onto another working assignment for the date in question. The Organization believes Rule 10 a - is controlling when it comes to annulling assignments on a normal workday, which was the case in this instant because MLK day is not a PAID holiday under Rule 40 of the agreement. The Organization believes that Rule 10 and the intent behind Rule 10 is that an employee is not to lose a day's pay for an annulment (except Paid Holidays) if he chooses not to. In this instant, the claimant chose to make a bump so he would not lose a day's pay, which was not allowed by CMS.

The Carrier's position in this matter is without merit because the listing of MLK day in with the Holiday schedule in the advertised bulletin is contrary to Rule 8 c, which limits the posting to the crew base, reporting and relieving point, turn-around or layover points, days on which the assignment is scheduled to, assigned reporting time, train or crew numbers and what the assignment works on a PAID holiday or if it is off a PAID holiday. The carrier is position that advance notice as in Rule 10 can be given more than 3 months ahead of time on the advertisement bulletin mixed-in with the PAID holiday schedule is not only fatally flawed, but also absurd.

Pursuant to the above arguments the Organization believes the claimant should be made whole for the date in question.

Sincerely,

Charlie Yura LC 838

Mr. Charlie Yura
1936 Yorktown South
Jeffersonville, PA 19403
March 30, 2009

Ms. Valorie J. Giulian
Division Manager – Labor Relations
900 Second St, N. E.
Washington, D. C. 20002

Dear Ms. Giulian:

I request a Ex Parte Submission for case # MID-UTU-7871, 7872, 1273, and 1277/1208 on behalf of Mr. M. Buckley, L. Jeffers, H. Broomes, C. Hooper, J. Floridia and Ms. K. McNeil.

Facts:

The Claimants (A), M. Buckley, J. Floridia, C. Hooper and K. McNeil were New York Crew Base assistant conductors who were forced assigned to the New York Extra Conductor's List, who submitted penalty time cards for violation of Rule 7 and Rule 8 from September 25 through October 27, 2008, when the Carrier failed to promote to conductors, junior assistant conductors J. Ballard, C. Prince, C. Kathrinner, K. Valenzuela and T. Tkatczyk, who each had more than 1 year of service. CMS denied these claims

Claimants (B) L. Jeffers and C. Hooper were New York assistant conductors, who were forced to bid onto conductor's positions instead of being forced to the New York conductor's extra list, who submitted penalty time cards for violation of Rule 7 from September 25 through October 27, 2008, when the carrier failed to promote junior assistant conductors J. Ballard, C. Prince, C. Kathrinner, K. Valenzuela and T. Tkatczyk, who each had more than 1 year of service. CMS denied these claims

Organization Position:

The Organization believes the Claimants are entitled to an eight hour penalty for the dates in question. The Organization believes the Carrier arbitrarily and capriciously violated the agreement for its own unscrupulous gain.

The Organization firmly believes that the Carrier violated Rule 7 when it failed to promote assistant conductors J. Ballard, C. Prince, C. Kathrinner, K. Valenzuela and T. Tkatczyk, who each had more than 1 year service (9/25/08) (unwritten local agreement), which in fact penalized the claimants (A) by forcing them to be forced assigned to the conductors list while the other claimants (B) had to bid onto conductors assignment rather then be forced assigned to the extra list. Rule 7 states that assistant conductors must complete a Passenger

Conductor Training Course within a prescribed time, which the Carrier in this case arbitrarily failed to do.

The Organization also believes that the Carrier violated Rule 8 j, when it failed to promote J. Ballard, C. Prince, C. Kathrinner, K. Valenzuela and T. Tkatczyk, who each had more than 1 year service, while the claimants were forced assigned. If the Carrier had followed Rule 7, then the Carrier would have had to abide by Rule 8 and notify and allow the claimants the right to vacate their forced positions and to displace onto other positions.

The Organization believes that the Carrier by violating Rules 7 and 8, unfairly penalized the senior claimants by making them work a 24 hour conductor's extra list and conductor assignments instead of the junior employees. The intent of Rules 7 and 8 is to protect the senior man from being forced assigned or having to bid onto inferior or undesired assignments, which was not the case in this matter

Pursuant to the above arguments the Organization believes the claimant should be made whole for the dates in question.

Sincerely,

Charlie Yura LC 838

Mr. Charlie Yura
5306 Overbrook Ave.
Phila., PA 19131
June 6, 2007

Ms. Valorie J. Giulian
Division Manager – Labor Relations
900 Second St, N. E.
Washington, D. C. 20002

Dear Ms. Giulian:

I request a Joint Submission for case # MID-UTU-7625, 7626, 7627, 7631/0407 on behalf of Messrs. G. Myers, D. Dunn, J. Zajac and Ms. B. Hague.

Facts:

The Claimants are Philadelphia Crew Base extra conductors and assistant conductors, who submitted penalty time cards for a violation of Rules 8, 12 and 13, when the Carrier used KR 701 (Lancaster Work Crew) to deadhead from Lancaster to work a Philadelphia Crew Base work train assignment, which worked on the Philadelphia to Washington line. The claimants, first out and available, were denied the opportunity to work. The Carrier used the engineer only from a Philadelphia work train to pilot KR 701 south. CMS denied these claims.

Organization Position:

The Organization believes the Claimants are entitled to an eight hour penalty for the dates in question. The Organization believes the Carrier arbitrarily and capriciously violated the agreement for its own unscrupulous gain.

The Organization firmly believes that the Carrier violated Rule 8, when it used the Lancaster Crew on a territory on which they do not have to qualify on. KR 701's qualification requirements and the limits of their assignment were only between Philadelphia and Harrisburg. KR – 701 is not or was not advertised to perform service between Philadelphia and Washington. The Organization cites the Crew Sheet which was in effect to support its position.

The Organization firmly believes that the Carrier violated Rules 12 and 13, when it failed to use the Claimants for this work. The Claimants were first, available to work these assignments, which were in realty, Philadelphia work train assignments C/A KP 705, 706, which were blanked, annulled or off. Extra work should revert to the extra board within the appropriate crew base, Philadelphia, in this instant. This was a classic example of the Carrier taking care of the regular crew at the expense of the extra list.

The Organization also believes that the Carrier violated past practice when it used a foreign crew base crew for work in which they are not qualified to perform in a different crew base. This type of work (PW Line) has always reverted to the Philadelphia crew base.

The Carrier's position is without merit and fatally flawed because Mr. Van Sant does not know or care about the labor agreement between the Carrier and the Organization. In this instant, the Mr. Van Sant violated past practice and the agreement as described above, which Labor Relations has the obligation to remedy instead of blindly following Mr. Van Sant's capricious actions.

Pursuant to the above arguments the Organization believes the claimants should be made whole for the dates in question.

Sincerely,

Charlie Yura LC 838

Mr. Charlie Yura
1936 Yorktown South
Jeffersonville, PA 19403
June 4, 2010

Ms. Valorie J. Giulian
Division Manager – Labor Relations
900 Second St, N. E.
Washington, D. C. 20002

Dear Ms. Giulian:

I request a Ex Parte Submission for case # MID-UTU-NEC- 7979/0310 on behalf of Mr. Charles Yura and the entire Philadelphia crew base. .

Facts:

The Claimant is the Philadelphia Crew Base local chairperson, who submitted a penalty time for all conductors and assistant conductors in the Philadelphia Crew Base under Rules 32, Letter 2, the National Vacation Agreement and past practice when the Carrier refused to allow employees weekly vacation for the last week of the 2009 (December 28, 2009 to January 1, 2010. The carrier only allowed single day vacation days during this period. CMS denied these claims.

Organization Position:

The Organization believes the Claimants are entitled to the last week of year as a weekly vacation week. The Organization believes the Carrier arbitrarily and capriciously violated the agreement for its own unscrupulous gain.

The Organization firmly believes that Carrier violated Rule 32, Letter 2, the National Vacation Agreement and established past practice when it refused to allow weekly vacation for the last week of the year, (Dec 28- Jan 1) if the last week does not have 5 days in December stating on a Monday.

The Organization believes that there are 52 weeks in a year and since the claimant's vacation pay is based on 1/52, that the claimants are entitled to 52 weeks a year to take a vacation, and by not allowing the last week of the year, the claimants were only allowed to choose vacation from 51 weeks.

The Organization firmly believes the claimants were allowed to have the last week until the carrier changed payroll systems. Before the system change the payroll employees would manually input the system to pay employees for this last week. It was a prime week which went very heavy in seniority. A check of the carrier's records will prove that this week was always a week of vacation in Philadelphia crew base until 2007. In 2007, the carrier basically double paid the claimants and were given unpaid time off in 2008. This year 2009, the crew base was only

allowing single day vacation. The Organization believes that by making the claimants use their single days for the last week or the first week of the next year, in essence denies the claimants the use of their single days when they want to use them and then forces the claimants to use weekly vacations through out the year when a single day might have sufficed. Ironically. If an employee does not use up all of his yearly vacation, he still is paid the balance early the next year, so why cannot the new system doing it on that last/first week of the year?

The Organization cites an e mail dated Monday January 27, 2003 to support its case. Its from then CMS Director Mike Kates which states that " labor relations is not able to support my instructions that the last week in December is NOT a week and therefore the corporation should not required to accept vacations scheduled to begin on 12/29. Although it is a bad business decision—it is out of our control. So vacations scheduled to begin on 12/29 will be accepted."

The Organization also cites correspondence dated March 16, 1998 between Al Suozzo and Larry Hrizack which also supports the fact that the last week of the year can be used and was used as a vacation slot.

The Organization also believes that other railroads allow the last week of the year, the Organization cites the case J. Desmond who just flowed over from NS who had had scheduled the 52 week of the year if he had stayed in NS.

The Carrier's position is without merit because in this case the claimants are NOT asking for monetary gains, only that they be entitled to use the last week of the year as a weekly vacation slot. The Organization cites Rule 47 and Letter dated Feb. 18, 1992 of the agreement which allows local agreements. In this case, the Local Chairperson is bringing it to attention by submitting a claim for his crew base.

The Carrier's position that vacations shall not be accumulated or carried over is also without merit, by not accumulating and carrying over, it is meant that employees cannot carry over and accumulate UNUSED vacations, For example, if an employee was entitled to 4 weeks of vacation in 2010 and only took 2 weeks, he then would not be entitled to 6 weeks vacation in 2011.

Pursuant to the above arguments the Organization believes the claimant should be made whole for the date in question.

Sincerely,

Charlie Yura LC 838

Mr. Charlie Yura
1936 Yorktown South
Jeffersonville, PA 19403
June 4, 2010

Ms. Valorie J. Giulian
Division Manager – Labor Relations
900 Second St, N. E.
Washington, D. C. 20002

Dear Ms. Giulian:

I request an Ex Parte Submission for case # MID-UTU-NEC- 7979/0310 on behalf of Mr. Charles Yura and the entire Philadelphia crew base. .

Facts:

The Claimant is the Philadelphia Crew Base local chairperson, who submitted a penalty time for all conductors and assistant conductors in the Philadelphia Crew Base under Rules 32, Letter 2, the National Vacation Agreement and past practice when the Carrier refused to allow employees weekly vacation for the last week of the 2009 (December 28, 2009 to January 1, 2010. The carrier only allowed single day vacation days during this period. CMS denied these claims.

Organization Position:

The Organization believes the Claimants are entitled to the last week of year as a weekly vacation week. The Organization believes the Carrier arbitrarily and capriciously violated the agreement for its own unscrupulous gain.

The Organization firmly believes that Carrier violated Rule 32, Letter 2, the National Vacation Agreement and established past practice when it refused to allow weekly vacation for the last week of the year, (Dec 28- Jan 1) if the last week does not have 5 days in December stating on a Monday.

The Organization believes that there are 52 weeks in a year and since the claimant's vacation pay is based on 1/52, that the claimants are entitled to 52 weeks a year to take a vacation, and by not allowing the last week of the year, the claimants were only allowed to choose vacation from 51 weeks.

The Organization firmly believes the claimants were allowed to have the last week until the carrier changed payroll systems. Before the system change the payroll employees would manually input the system to pay employees for this last week. It was a prime week which went very heavy in seniority. A check of the carrier's records will prove that this week was always a week of vacation in Philadelphia crew base until 2007. In 2007, the carrier basically double paid the claimants and were given unpaid time off in 2008. This year 2009, the crew base was only

allowing single day vacation. The Organization believes that by making the claimants use their single days for the last week or the first week of the next year, in essence denies the claimants the use of their single days when they want to use them and then forces the claimants to use weekly vacations through out the year when a single day might have sufficed. Ironically. If an employee does not use up all of his yearly vacation, he still is paid the balance early the next year, so why cannot the new system doing it on that last/first week of the year?

The Organization cites an e mail dated Monday January 27, 2003 to support its case. Its from then CMS Director Mike Kates which states that " labor relations is not able to support my instructions that the last week in December is NOT a week and therefore the corporation should not required to accept vacations scheduled to begin on 12/29. Although it is a bad business decision—it is out of our control. So vacations scheduled to begin on 12/29 will be accepted."

The Organization also cites correspondence dated March 16, 1998 between Al Suozzo and Larry Hrizack which also supports the fact that the last week of the year can be used and was used as a vacation slot.

The Organization also believes that other railroads allow the last week of the year, the Organization cites the case J. Desmond who just flowed over from NS who had had scheduled the 52 week of the year if he had stayed in NS.

The Carrier's position is without merit because in this case the claimants are NOT asking for monetary gains, only that they be entitled to use the last week of the year as a weekly vacation slot. The Organization cites Rule 47 and Letter dated Feb. 18, 1992 of the agreement which allows local agreements. In this case, the Local Chairperson is bringing it to attention by submitting a claim for his crew base.

The Carrier's position that vacations shall not be accumulated or carried over is also without merit, by not accumulating and carrying over, it is meant that employees cannot carry over and accumulate UNUSED vacations, For example, if an employee was entitled to 4 weeks of vacation in 2010 and only took 2 weeks, he then would not be entitled to 6 weeks vacation in 2011.

Pursuant to the above arguments the Organization believes the claimant should be made whole for the date in question.

Sincerely,

Charlie Yura LC 838

Mr. Charlie Yura
1936 Yorktown South
Jeffersonville, PA 19403
March 23, 2009

Ms. Valorie J. Giulian
Division Manager – Labor Relations
900 Second St, N. E.
Washington, D. C. 20002

Dear Ms. Giulian:

I request a Joint Submission for case # MID-UTU-7879/0109 on behalf of Ms. C. Burrus

Facts:

The Claimant is a Harrisburg Crew Base Conductor, who submitted penalty time cards for violation of Rules 2, 12 and 13, when the Carrier failed to pay her conductor's rates after the Carrier (K. Conrad) ordered her to qualify between Harrisburg and New York during the period of July 21, 2008 through September 21, 2009. CMS never denied these claims. The time limits for this request were extended by mutual agreement per phone conversation with Labor Relations Officer J. Markase.

Organization Position:

The Organization believes the Claimants are entitled to be made whole for the dates in question. The Organization believes the Carrier arbitrarily and capriciously violated the agreement for its own unscrupulous gain.

The Organization firmly believes that the Carrier violated Rules 2, 12, and 13 when it failed to pay conductors rates when the Carrier ordered the claimant from the Harrisburg extra list to qualify from Philadelphia to New York, which was a new territory added to the Harrisburg Crew Base. In this case, the claimant was forced to qualify on conductor physical characteristics on the new territory, despite the fact that the territory was not part of any Harrisburg assignments. The Organization believes that the carrier should have paid conductor's rate for working and qualifying as a conductor as per these rules.

The Organization also believes that the Carrier violated its own payment policy in these matters. The Carrier has paid conductor's rates to employees who had worked as a conductor prior to being forced to qualify. In this case, the claimant did work a conductor assignment prior to being forced to qualify, and should be paid as such. The claimant worked CXPEC3J on July 13, 2008.

The Organization also cites it's conversation with Road Foreman Kevin Conrad who explained to Local Chairman Yura that some of the extra board he ordered to qualify was paid

conductor rates and that the reason the claimant was not was because she worked as an assistant conductor the day before she was ordered to qualify, which was not the case.

The Organization also cites Rule 8 which mandates that employees forced to a conductor position would be paid conductor rates. In this case, the carrier forced the claimant to qualify as a conductor.

The Carrier's position that the claim was never received at the first level is without totally merit. For the last 10 years the Organization and the local managers in the Philadelphia crew base have had an established practice where in the Organization (JJ McCollum) signs the claim, initials the receipts for the managers and processes them through the Secretary, who in turns then mails the claims to CMS in Wilmington, DE. In this case, the manager E. King forgot the practice when notified by Labor Relations, but has since notified the Carrier of the established practice and of the timely fashion in which claims are progressed in Philadelphia.

The Organization also cites the reason for the practice was because the carrier saw fit to eliminate the station masters and yard masters in Philadelphia which made it very difficult for the Organization and the employees to get their claims signed because of a lack of an officer of the corporation being available at all times.

The Organization would also cite the thousands of claims processed by the Organization in Philadelphia over the last 10 years in a timely fashion where in this practice has not been an issue even when claims were not denied and lost by CMS.

The Organization firmly believes that its creditability and integrity are above reproach in this matter and it's because of these reasons the local managers agreed to the practice in the first place! Also, as a matter of fact, the Carrier even gave the Organization a key to the penalty time card box in Philadelphia. If the Organization had wished it could have trashed hundreds of claims, which would have necessitated full payment for far more important and costly claims then the claims in this matter. Obviously, that was not the case

Pursuant to the above arguments the Organization believes the claimant should be made whole for the dates in question.

Sincerely,

Charlie Yura LC 838

Mr. Charlie Yura
1936 Yorktown South
Jeffersonville, PA 19403
July 20, 2009

Ms. Valorie J. Giulian
Division Manager – Labor Relations
900 Second St, N. E.
Washington, D. C. 20002

Dear Ms. Giulian:

I request a Joint Submission for case # MID-UTU-7931/0509 on behalf of Mr. V. Goode.

Facts:

The Claimant is a Philadelphia Crew Base assistant conductor (apw 702), who submitted an 8 hour penalty time card for violation of Rule 40, when he was not paid Holiday Pay for April 1, 2009. (Good Friday) CMS denied this claim.

Organization Position:

The Organization believes the Claimant is entitled to an eight hour penalty for the date in question. The Organization believes the Carrier arbitrarily and capriciously violated the agreement for its own unscrupulous gain.

The Organization firmly believes that the Carrier violated Rule 40 when it denied the Claimant, Holiday Pay for April 1, 2009. The Carrier denied the Holiday Pay alleging that the Claimant did not bridge the holiday because he did not work on March 31, 2009.

The Organization firmly believes that the Claimant did indeed perform service on March 31, 2009. In this instance, the Claimant signed up at 11:07 am and deadheaded to New York on train # 184. After arriving in New York, the Claimant marked off sick (stress, due to chest pain) at 1:10 pm and then deadheaded back to Philadelphia, where he was admitted to the hospital with a heart attack. By deadheading to New York, the claimant performed service for over 2 hours on his regular assignment, which meets the requirements of Rule 40.

The Organization firmly believes that the Carrier also violated established railroad industry past practice, which states that once an employee "turns a wheel", that employee performed service. In this case, the Claimant did indeed "turn a wheel", by deadheading to New York on train # 148.

The Carrier's position is without merit and misleading because in situations where employees do not complete their assignment, the CMS system intentionally omits the employee service time records in the LMS and payroll system, leaving his pay up to the Organization to

fight for, which is the case with this submission. This can be verified by CMS Director Bob Schmidt.

The Organization cites the fact that CMS modified the claimant's assignment and filled the balance of his job with a New York extra list employee, which proves that the claimant was on duty for 2 hours and 3 minutes.

The Organization also cites the fact, that all service timecards are generated by CMS/LMS and that employees can not submit a service time card, only penalty time cards, which was the case in this instance.

Pursuant to the above arguments the Organization believes the claimant should be made whole for the date in question.

Sincerely,

Charlie Yura LC 838

5306 OVERBROOK AVE.
PHILA., PA 19131
JULY 1, 2004

MS. B. J. BLAIR
DIVISION MANAGER – LABOR RELATIONS
900 SECOND STREET, N. E.
WASHINGTON, D. C. 20002

DEAR MS. BLAIR:

I REQUEST A JOINT SUBMISSION FOR DISCIPLINE CASE # MID-UTU-6424D/0204 ON BEHALF OF MR. D. HIGGINS.

FACTS:

THE CLAIMANT IS AN ASSISTANT PHILADELPHIA CONDUCTOR, WHO WAS NOTIFIED TO ATTEND AN INVESTIGATION SCHEDULED TO BEGIN JANUARY 2, 2004, IN CONNECTION WITH THE FOLLOWING CHARGE:

ALLEGED VIOLATION OF SYSTEM SPECIAL INSTRUCTIONS OF THE NORAC OPERATING RULES. RULE 116-SI PART D: CREW MEMBER REQUIRE COMMUNICATIONS: WHEN THE CREW MEMBER ON THE LEADING END OF THE MOVEMENT IS DIRECTING THE MOVEMENT BY RADIO, HE/SHE MUST INFORM THE ENGINEER OF THE POSITION OS SWITCHES (UNLESS GOVERNED BY SIGNAL INDICATION) AND DERAILS, SIGNAL INDICATIONS, AND OTHER CONDITIONS THAT MAY AFFECT THE MOVEMENT PRIOR TO THE START OF THE SHOVING OR BACK UP MOVEMENT. THIS INFORMATION MUST BE INCLUDED, WHEN APPLICABLE, IN SUBSEQUENT INSTRUCTIONS DURING THE MOVEMENT. THE CREW MEMBER DIRECTING A SHOVING OR BACKING MOVEMENT BY RADIO MUST INCLUDE, IN ADDITION TO THE REQUIRED IDENTIFIED, HIS OR HER NAME OR POSITION ON THE CREW. THE ENGINEER MUST NOT START MOVEMENT UNTIL THIS INFORMATION IS RECEIVED.

BULLETIN ORDER NO. 8-61, DATED MONDAY, DECEMBER 22, 2003, PARAGRAPH G, SHOVING OR BACKING MOVEMENTS, CREW MEMBER REQUIRED COMMUNICATIONS: THE LAST PARAGRAPH OF SI 116 SI, PAGE 305a IS REVISED AS FOLLOWS: THE CREW MEMBER DIRECTING A SHOVING OR BACKING MOVEMENT BY RADIO MUST INCLUDE, IN ADDITION TO THE ABOVE, HIS/HER TITLE AND WHETHER THEY ARE ON THE POINT OR PROCEEDING THE MOVE (DUE TO CLOSE CLEARANCE OR WHERE THE LEADING CAR OR ENGINE IS NOT EQUIPPED WITH AN OPERATOR'S COMPARTMENT, VESTIBULE, DOORWAY, PLATFORM OR A SLIDE LADDER) THE ENGINEER MUST NOT START MOVEMENT UNTIL THIS INFORMATION IS RECEIVED.

RULE 116-S2: BACK UP HOSE, FIRST AND LAST PARAGRAPH.

SPECIFICATION: IT IS ALLEGED THAT ON DEC. 24, 2003, AT APPROXIMATELY 6:20 AM, WHILE ASSIGNED AS ASSISTANT CONDUCTOR OF CREW YP 409, AND WHILE SHOVING EIGHT (8) CAR DRAFT INTO A TRACK (MH) I9N ORDER TO COUPLE TO (14) ROADRAILERS OCCUPYING THIS TRACK, YOU FAILED TO PROPERLY CONTROL, VIA RADIO OR USE OF AVAILABLE BACK-UP HOSE, THE MOVEMENT. THIS RESULTED IN A COLLISION WITH THE STANDING ROADRAILERS.

THE CARRIER POSTPONED THE INVESTIGATION UNILATERALLY UNTIL FRIDAY, JAN. 9, 2004, BECAUSE OF WITNESSES TO APPEAR AT THE INVESTIGATION FOR THE COMPANY WAS ON VACATION.

THE INVESTIGATION WAS HELD AS A DUAL INVESTIGATION WITH MR. GREGORY POLLARD ON JANUARY 9, 2004.

MR. HIGGINS AND HIS REPRESENTATIVE, MR. CHARLIE YURA, WERE PRESENT AND WERE AFFORDED THE OPPORTUNITY TO QUESTION WITNESSES AND PRESENT EVIDENCE.

A DECISION LETTER DATED JANUARY 24, 2004 WAS ISSUED ASSESSING MR. HIGGINS A 30- DAY SUSPENSION, WHICH WAS SERVED BY MR. HIGGINS.

MR. HIGGINS APPEALED THE DECISION BY LETTER DATED JANUARY 29, 2004.

LABOR RELATIONS OFFICER JIM RYAN HELD THE APPEAL ON MAY 20, 2004.

BY LETTER OF JUNE 1, 2004, MR. HIGGINS APPEAL WAS DENIED. LOCAL CHAIRMAN C. YURA REQUESTED A JOINT SUBMISSION DATED JULY 1, 2004.

EMPLOYEE POSITION:

THE ORGANIZATION FIRMLY BELIEVES THAT IT PROVED THAT THE CLAIMANT WAS INNOCENT OF THE CHARGES.

THE ORGANIZATION PROVED THE FOLLOWING PROCEDURAL FAULTS:

THE CLAIMANT WAS NOT GIVEN REASONABLE ADVANCED NOTICE IN WRITING OF THE SPECIFIC CHARGE ON WHICH HE WAS TO BE TRIED

AND THE TIME AND PLACE OF THE TRIAL. THE CLAIMANT WAS GIVEN IMPROPER NOTICE FOR A FAIR AND IMPARTIAL TRIAL. (PAGE 19)

THE CARRIER VIOLATED THE TIME LIMITS BY NOT BEGINNING WITHIN 10 DAYS FOLLOWING THE DATE THE ACCUSED IS FIRST HELD OUT OF SERVICE. IF NOT SCHEDULED, THE CHARGE WILL BECOME NULL AND VOID (PAGE 20)

THE CARRIER ALSO VIOLATED THE TIME LIMITS BY UNILATERALLY POSTPONING THE TRIAL (VACATION) EVEN THOUGH NO FIRST HAND WITNESS WAS ON VACATION. TRANSPORTATION MANAGER B. ZAJAC WAS NOT ON VACATION AND MR. L. MYERS WAS NOT A FIRST HAND WITNESS. (PAGE 22-26, 32-36)

WITNESS ENGINEER S. VANN WAS NEVER GIVEN NOTICE TO APPEAR AS A WITNESS IN THE CLAIMANT'S TRIAL. THE CARRIER WANTED TO HAVE A JOINT BLE AND UTU CASE. HOWEVER MR. VANN ACCEPTED A WAVIER THE CARRIER ALSO VIOLATED THE TIME LIMITS OF RULE 25 L 2, BY NOT HAVING THE APPEAL WITHIN 15 DAYS OF THE RECEIPT OF THE APPEAL. THE CARRIER RECEIVED NOTICE ON FEBRUARY 6TH AND THE APPEAL WAS HELD ON MAY 20, 2004.

THE ORGANIZATION PROVED THE FOLLOWING FACTS IN THE TRIAL:

MR. HIGGINS DID NOT VIOLATE RULE 116-SI AND HE CANNOT BE HELD ACCOUNTABLE, IF THE RULE WAS NOT VIOLATED. (PAGE 109)

NORAC RULE 116 WAS IN EFFECT, THEREFORE RULE 116- SI WAS NOT APPLICABLE. (PAGE 109)

ALLEGED VIOLATIONS OF NORAC RULE 116 AND SI 116 HAD ABSOLUTELY NO BEARING OR RESPONSIBILITY FOR THE COLLISION.

THE CARRIER WITHDREW BACK-UP HOSE ALLEGED VIOLATION BECAUSE IT WAS ALSO NOT APPLICABLE.

MR. HIGGINS FOLLOWED PROPER RADIO PROCEDURES AND GIVE PROPER DISTANCES WHEN COMMUNICATING TO HIS ENGINEER. (PAGE 184)

MR. HIGGINS WAS IN THE PROPER POSITION, ON THE REAR OF THE EQUIPMENT. (187, 281)

THE CARRIER NEVER DID CHECK MR. HIGGINS'S RADIO FOR DEFECTS, EVEN THOUGH THE CARRIER KNEW HE HAD PROBLEMS WITH IT BEFORE. (PAGE 60, 270-272)

THERE WERE MITIGATING CIRCUMSTANCES THAT LED TO THE COLLISION, WHICH WERE IGNORED BY MANAGEMENT; RADIO, RECEPTION, LIGHTING AND WEATHER PROBLEMS, (PAGE 60, 61, 270-272, 276)

THE CARRIER NEVER FULLY INVESTIGATED THE CAUSES OF THE COLLISION BY FAILING TO PROPERLY INSPECT THE TRAIN AND ITS BRAKES FOR PROBLEMS. (PAGE 56-61) THE CARRIER CONTAMINATED EVIDENCE BY MOVING THE EQUIPMENT BEFORE IT STARTED IT'S INVESTIGATION. (PAGE 114, 123, 124)

PURSUANT TO THE ABOVE FACTS AND OTHERS CONTAINED IN THE TRANSCRIPT OF THE INVESTIGATION, THE ORGANIZATION IS REQUESTING THAT THE CLAIMANT BE EXONERATED OF ALL ALLEGED RULE VIOLATIONS AND THAT ALL DISCIPLINE BE EXPUNGED FROM HIS RECORD AND THAT HE BE MADE WHOLE FOR ALL LOSS EARNINGS DUE TO THE INVESTIGATION AND SUSPENSION.

SINCERELY,

CHARLIE YURA
LOCAL 838

5306 OVERBROOK AVE.
PHILA., PA 19131
APRIL 20, 2006

MS. B. J. BLAIR
DIVISION MANAGER – LABOR RELATIONS
900 SECOND STREET, N. E.
WASHINGTON, D. C. 20002

DEAR MS. BLAIR:

I REQUEST A JOINT SUBMISSION FOR CASE # MID-UTU- 7326D/0206, ON BEHALF OF MR. A. McCLELLAND.

FACTS:

THE CLAIMANT IS A PHILADELPHIA BASED CONDUCTOR WHO WAS NOTIFIED TO ATTEND AN INVESTIGATION DATED OCTOBER 4, 2005, IN CONNECTION WITH THE FOLLOWING CHARGES:

CHARGE 1 - SAFETY – YOUR ALLEGED VIOLATION OF THE " SAFETY " STANDARD IN AMTRAK'S STANDARDS OF EXCELLENT WHICH READS IN PERTINENT PART … " AMTRAK'S HIGHEST PRIORITY IS THE SAFETY AND WELL-BEING OF OUR EMPLOYEES AND PASSENGERS. YOU ARE ESSENTIAL IN ACHIEVING THAT GOAL. AS AN AMTRAK EMPLOYEE, YOU CAN BEGIN BY BEING SURE YOU UNDERSTAND AND COMPLY WITH ALL SAFETY REQUIREMENTS RELATED TO YOUR POSITION. "

CHARGE 2 – AMTRAK'S SAFETY RULES FOR TRAIN SERVICE EMPLOYEES – RULE 5201 – YOUR ALLEGED VIOLATION, WHICH READS IN PERTINENT PART… " WHEN WALKING, WATCH WERE YOU ARE GOING, PAY CLOSE ATTENTION TO FOOTING CONDITIONS AND SURROUNDINGS TO AVOID INJURIES. "

CHARGE 3 – AMTRAK'S SAFETY RULES FOR TRAIN SERVICE EMPLOYEES – RULE 5309 – YOUR ALLEGED VIOLATION, WHICH READS IN PERTINENT PART…"PLACE FEET FIRMLY AND HAVE SECURE HANDHOLD DURING ANY OPERATION OR SITUATION ON THE GROUND OR ON THE EQUIPMENT W2HEN NECESSARY TO MAINTAIN STABILITY."

CHARGE 4 – AMTRAK'S SAFETY RULES FOR TRAIN SERVICE EMPLOYEES, RULE 5303 – YOU ALLEGED VIOLATION, WHICH READS IN PERTINENT PART: "WHEN GETTING ON AND OFF STANDING EQUIPMENT, EMPLOYEES MUST: a – BEFORE DISMOUNTING, HAVE A SECURE HANDHOLD AND OBSERVE FOOTING CONDITIONS, WHEN DISMOUNTING, PLACE FEET ON GROUND BEFORE RELEASING HANDHOLD. b – FACE

EQUIPMENT, EXCEPT PASSENGER CARS AT HIGH PLATFORMS, AND KEEP BODY AS CLOSE AS POSSIBLE TO EQUIPMENT,

SPECIFICATION – IN THAT, ON SEPTEMBER 24, 2005, WHILE WORKING YOUR REGULAR ASSIGNMENT AS CONDUCTOR (CPH407) ON TRAIN 614, IT IS ALLEGED THAT YOU FAILED TO PAY CLOSE ATTENTION TO YOUR SURROUNDINGS STEPPING OFF THE BOTTOM STEP OF COACH #82509, ONTO THE PLATFORM AT COATESVILLE, PA, WHICH RESULTING IN YOUR INJURING YOUR LEFT KNEE.

THE INVESTIGATION WAS POSTPONED DUE THE CLAIMANT'S MEDICAL STATUS AND ALSO BY THE ORGANIZATION.

THE INVESTIGATION WAS CONDUCTED ON JANUARY 20, 2006.

A DECISION LETTER DATED FEBRUARY 3, 2006 WAS ISSUED FINDING MR. McCLELLAND GUILTY OF ALL CHARGES AND ASSESSING HIM A TEN-DAY SUSPENSION, FIVE DAYS ACTUALLY SERVICED AND FIVE DAYS IN ABEYANCE.

THE ORGANIZATION APPEALED THE DECISION BY LETTER DATED FEBRUARY 7, 2006.

NO OFFICIAL APPEAL HEARING WAS HELD BY THE CARRIER, HOWEVER BY LETTER DATED FEBRUARY 27, 2006, LABOR RELATIONS DIVISION MANAGER BETTY BLAIR DENIED THE APPEAL LETTER OF THE ORGANIZATION, DUE TO THE 15-DAY TIME LIMITATION AND BASED ON THE FACT THE CLAIMANT WAS OFF INJURED FOR OVER 1 MONTH.

LOCAL CHAIRMAN, CHARLIE YURA REQUESTED A JOINT SUBMISSION DATED APRIL 20, 2006.

EMPLOYEE POSITION:

THE ORGANIZATION FIRMLY BELIEVES THAT MR. MCCLELLAND IS INNOCENT OF ALL CHARGES.

THE ORGANIZATION FIRMLY BELIEVES THAT THE RECORD WILL PROVE THAT THERE WAS NOT ONE OUNCE OF EVIDENCE TO SUPPORT THE CHARGES AGAINST THE CLAIMANT.

THE ORGANIZATION FIRMLY BELIEVES THAT MR. McCLELLAND WAS CHARGED WITH RULE VIOLATIONS ONLY BECAUSE HE WAS INJURED AND THAT THE CARRIER WANTS TO MITIGATE ITS RE3SPONSIBILITY, TO PAPER TRAIL ALL EMPLOYEE INJURIES AND NOT BECAUSE THE CLAIMANT VIOLATED ANY SERVICE STANDARDS OR SAFETY RULES.

THE RECORD WILL PROVE THAT THE CARRIER FAILED MISERABLY TO PROVE THAT THE CLAIMANT VIOLATED ANY SPECIFIC RULES THAT HE WAS CHARGED WITH.

THE RECORD WILL ALSO PROVE THE FOLLOWING FACTS:

THERE IS NOT ONE SHRED OF EVIDENCE THAT MR. MCCLELLAND VIOLATED ANY RULE.

THAT THE CARRIER'S AGENT (L. TURNER) FALSIFIED THE EMPLOYEE INJURY REPORT AND THAT THE CARRIER WOULD NOT HAVE EVEN INTRODUCED THE DOCUMENT, IF NOT FOR THE ORGANIZATION, CAUSING A VIOLATION OF THE CLAIMANTS DUE PROCESS BY HIDING ALL PERTINENT FACTS. (P.18, 19)

THE CARRIER'S CASE WAS BASED ON A FALSE PREMISE THAT MR. MCCLELLAND SOMEHOW HAD TO VIOLATE A RULE IF HE GOT INJURED.

THAT THE CLAIMANT FOLLOWED ALL RULES, YET STILL GOT INJURED BECAUSE OF THE DEPLORABLE CONDITIONS AT COATESVILLE STATION. (P. 20 – 24, 64 – 68) (EXB. 2, PICTURES)

THAT THE PLATFORM AT COATESVILLE IN IS DISREPAIR AND THAT THE CARRIER HAS HAD FULL KNOWLEDGE FOR YEARS AND HAS FAILED TO FIX THE PROBLEM. (P. 21 - 23) (EXB. 2, PICTURES)

THAT THE LIGHTING CONDITIONS AT COATESVILLE STATION IS BASICALLY NON EXISTENT, WITH ONLY 1 LIGHT STANDARD, WHICH WAS NOT WORKING THE DAY OF THE INCIDENT. THE CARRIER HAS HAD FULL KNOWLEDGE OF THE LACK OF LIGHTS FOR YEARS AND FAILED TO FIX THE PROBLEM. (P. 21 – 23, 64 – 68) (EXB. 2, PICTURES)

THAT MR. MCCLELLAND DID INDEED PAY CLOSE ATTENTION TO HIS FOOTING CONDITIONS, WHICH MADE HIM SHIFT HIS FOOTING TO AVOID STANDING ON AN UNEVEN, BROKEN PLATFORM, WHICH THEN WOULD HAVE BEEN A SAFETY VIOLATION. (P. 45 – 51)

THAT MR. MCCLELLAND MAINTAINED A FIRM HANDHOLD WHEN HE DESCENDED DOWN THE TRAIN STEPS. (P. 45 – 51)

THAT MR. McCLELLAND ACTUALLY HURT HIS KNEE IN HIS EFFORT TO FOLLOW THE SAFETY RULE AND MAINTAIN STABILITY. (P. 45- 51)

THAT MR. McCLELLAND ACTUALLY HURT HIS KNEE WHILE FACING THE EQUIPMENT, WHEN HE WAS ON THE LAST STEP OF THE TRAIN. (P. 46, 47)

THE HEARING OFFICER'S DECISION WAS NOT OBJECTIVE AND NOT BASED ON THE FACTS, BUT MERELY A RUBBER STAMP FOR THE CARRIER'S POSITION. HIS REASONING WAS ILLOGICAL AND FATALLY FLAWED.

THE HEARING OFFICER WAS IN ERROR WHEN HE REASON THAT THE CLAIMANT SHOULD HAVE LIFTED HIS LEFT FOOT INTO A PROPER POSITION WHICH WOULD HAVE PREVENTED THE TORTURING OF THE LEFT KNEE. HOW COULD ANYONE LIFT THEIR LEFT FOOT, WHEN STEPPING DOWN AND YOUR RIGHT FOOT IS NOT YET FIRMLY ON THE GROUND. YOU WOULD HAVE TO EITHER JUMP IN THE AIR OR BE SUPERMAN TO DO WHAT THE HEARING OFFICER REASON. (DECISION LETTER)

THE HEARING WAS IN ERROR AND OUT OF HIS EXPERTISE WHEN HE SUGGESTED THAT PIVOTING IS A VIOLATION OF A RULE, HOWEVER THE REASON MR. McCLELLAND PIVOTED WAS BECAUSE OF THE DEPLORABLE CONDITION OF THE TRAIN PLATFORM, WHICH THE HEARING OFFICER CONVENT ALLY FORGOT TO CONSIDER OR MENTION. NOWHERE DOES ANY OF THE RULES CHARGED OR ANY OTHER RULE DOES IT SAY THAT PIVOTING IS A SAFETY VIOLATION. OBVIOUSLY, THE HEARING OFFICER IS NOT AN ERGONOMIST QUALIFIED TO MAKE SUCH AN ASSUMPTION. (DECISION LETTER)

THAT THE HEARING OFFICER TOOK NO EXCEPTION TO THE CLAIMANT'S ACTIONS UNDER CHARGE 2, RULE 5201, YET STILL FOUND THE CLAIMANT GUILTY OF THIS CHARGE.

THE CHARGING OFFICER ADMITTED THAT THERE WAS A SCENARIO THAT THE CLAIMANT DID NOT VIOLATE ANY RULE, BUT JUST HURT HIMSELF. (P. 71)

NOTWITHSTANDING THE ABOVE ARGUMENTS, THE ORGANIZATION FIRMLY BELIEVES THAT CARRIER'S DISCIPLINE OF 5 DAYS SERVED WAS IN VIOLATION OF RULE 25 k-1, BY NOT HOLDING THE 5 DAYS IN ABEYANCE.

PURSUANT TO THE ABOVE FACTS AND OTHERS CONTAINED IN THE TRANSCRIPT OF THE INVESTIGATION, THE ORGANIZATION IS REQUESTING THE CLAIMANT BE EXONERATED OF ALL ALLEGED RULE VIOLATIONS AND THAT ALL DISCIPLINE BE EXPUNGED FROM HIS RECORD AND THAT HE BE MADE WHOLE FOR ALL LOST EARNINGS DUE TO THE INVESTIGATION AND SUSPENSION.

SINCERELY,

CHARLIE YURA 838

5306 OVERBROOK AVE.
PHILA., PA 19131
APRIL 19, 2006

MS. B. J. BLAIR
DIVISION MANAGER – LABOR RELATIONS
900 SECOND STREET, N. E.
WASHINGTON, D. C. 20002

DEAR MS. BLAIR:

I REQUEST A JOINT SUBMISSION FOR CASE # MID-UTU- 7325D/0206, ON BEHALF OF MR. G. NOCENTINO.

FACTS:

THE CLAIMANT IS A PHILADELPHIA BASED CONDUCTOR WHO WAS NOTIFIED TO ATTEND AN INVESTIGATION DATED OCTOBER 4, 2005, IN CONNECTION WITH THE FOLLOWING CHARGES:

CHARGE 1 - SAFETY – YOUR ALLEGED VIOLATION OF THE " SAFETY " STANDARD IN AMTRAK'S STANDARDS OF EXCELLENT WHICH READS IN PERTINENT PART … " AMTRAK'S HIGHEST PRIORITY IS THE SAFETY AND WELL-BEING OF OUR EMPLOYEES AND PASSENGERS. YOU ARE ESSENTIAL IN ACHIEVING THAT GOAL. AS AN AMTRAK EMPLOYEE, YOU CAN BEGIN BY BEING SURE YOU UNDERSTAND AND COMPLY WITH ALL SAFETY REQUIREMENTS RELATED TO YOUR POSITION. "

CHARGE 2 – SAFETY RULES FOR TRAIN SERVICE EMPLOYEES – RULE 5201 – WHICH READS IN PERTINENT PART… " WHEN WALKING, WATCH WERE YOU ARE GOING, PAY CLOSE ATTENTION TO FOOTING CONDITIONS AND SURROUNDINGS TO AVOID INJURIES. "

SPECIFICATION – IN THAT, ON OCTOBER 1, 2005, WHILE WORKING YOUR REGULAR ASSIGNMENT AS CONDUCTOR (CPH406) ON TRAIN 609, IT IS ALLEGED THAT YOU FAILED TO PAY CLOSE ATTENTION TO YOUR SURROUNDINGS WHEN ENTERING COACH 82518, WHICH RESULTED IN YOUR INJURING YOURSELF WHEN A PRY BAR FELL OUT OF THE EMERGENCY EQUIPMENT COMPARTMENT AND STRUCK YOU ON YOUR LEFT FOOT.

THE INVESTIGATION WAS POSTPONED DUE THE CLAIMANT'S MEDICAL STATUS AND ALSO BY THE ORGANIZATION.

THE INVESTIGATION WAS CONDUCTED ON JANUARY 20, 2006.

A DECISION LETTER DATED FEBRUARY 3, 2006 WAS ISSUED FINDING MR. NOCENTINO GUILTY OF ALL CHARGES AND ASSESSING HIM A TEN-DAY SUSPENSION, FIVE DAYS ACTUALLY SERVICED AND FIVE DAYS IN ABEYANCE.

THE ORGANIZATION APPEALED THE DECISION BY LETTER DATED FEBRUARY 7, 2006.

NO OFFICIAL APPEAL HEARING WAS HELD BY THE CARRIER, HOWEVER BY LETTER DATED FEBRUARY 27, 2006, LABOR RELATIONS DIVISION MANAGER BETTY BLAIR DENIED THE APPEAL LETTER OF THE ORGANIZATION, DUE TO THE 15-DAY TIME LIMITATION AND BASED ON THE FACT THE CLAIMANT WAS OFF INJURED FOR 2 MONTHS.

LOCAL CHAIRMAN, CHARLIE YURA REQUESTED A JOINT SUBMISSION DATED APRIL 19, 2006.

EMPLOYEE POSITION:

THE ORGANIZATION FIRMLY BELIEVES THAT MR. NOCENTINO IS INNOCENT OF ALL CHARGES.

THE ORGANIZATION FIRMLY BELIEVES THAT THE RECORD WILL PROVE THAT THERE WAS NOT ONE SCINTILLA OF EVIDENCE TO SUPPORT THE CHARGES AGAINST THE CLAIMANT. AS A MATTER OF FACT, SINCE THE CARRIER HAD NO PROOF AND COULD NOT PROVE THE CHARGES; BOTH THE CHARGING AND HEARING OFFICERS BASED THEIR CASE AND DECISION ON A FALSE, IRRELEVANT AND MISLEADING THEORY THAT THE CLAIMANT FAKED HIS INJURY ON THE TRAIN AND FALSIFIED HIS TESTIMONY. IF THAT WAS THE CASE, THEN WHY DID NOT THE CARRIER BRING MR. NOCENTINO UP ON DISHONESTY CHARGES FOR FAKING HIS INJURY AND FALSIFYING HIS TESTIMONY AND WHY DID THE CARRIER'S CLAIM DEPARTMENT SETTLE THE INJURY CASE? (IF THE CLAIMANT WANTED TO FAKE AN INJURY, I'M SURE A 30 YEAR PLUS EMPLOYEE COULD COME UP WITH A BETTER STORY)

THE RECORD WILL PROVE THE FOLLOWING FACTS:

THERE IS NOT ONE SHRED OF EVIDENCE THAT MR. NOCENTINO VIOLATED ANY RULE.

THE CARRIER'S CASE WAS BASED ON A FALSE, IRRELEVANT THEORY THAT MR. NOCENTINO FAKED HIS INJURY.

MR. NOCENTINO WAS INJURED, WITH A BROKEN LEFT TOE, WHEN A PRY BAR FELL FROM THE EQUIPMENT LOCKER, AFTER THE AUTOMATIC COACH DOOR OPENED. (P. 16, 46)

AN AUTOMATIC COACH DOOR OPENS AND CLOSES WITHIN 15 SECONDS. (P.27)

TESTIMONY FROM ROAD FOREMAN CONRAD PROVED THAT ONE USUALLY STARTS WALKING, LIKE THE MILITARY, WITH THE LEFT FOOT FIRST, WHICH THE CHARGING OFFICER COULD NOT SEEM TO GRASP THROUGHOUT HER QUESTIONING, WHICH VERIFIES THE CLAIMANT'S TESTIMONY (P. 61-63) AND INJURY TO HIS LEFT TOE, NOT HIS RIGHT FOOT. (P. 29, 30, 56, 65, 66)

THE EQUIPMENT LOCKER IS RECESSED INTO THE WALL OF THE COACH AND CANNOT BE SEEN FROM THE VESTIBULE OR FROM THE COACH WINDOW. (P. 28, 46, 47)

THE PRY BAR IS RECESSED BEHIND AND TO THE RIGHT OF THE FIRE EXTINGUISHER IN THE LOCKER AND IT ALSO CANNOT BE SEEN FROM THE DOOR WINDOW. CARRIER WITNESS ROAD FOREMAN CONRAD CONCURRED. (P. 20, 21, 22, 46, 47)

THE PRY BAR WEIGHS ABOUT 5 POUNDS AND SHOULD NOT FALL OUT OF THE LOCKER. (P.26, 59)

A PERSON MUST ENTER THE COACH TO INSPECT THE EQUIPMENT LOCKER. (P. 28, 30, 31, 45, 46)

WHEN REENACTED BY ROAD FOREMAN CONRAD, THE PRY BAR DID INDEED FALL FROM THE LOCKER, WHEN THE BAR AND LOCKER DOOR WERE NOT PROPERLY SECURED. (P. 32, 38, 52)

TESTIMONY BY MR. NOCENTINO WAS NEVER REFUTED BY THE CARRIER, BUT ACTUALLY REINFORCED BY THE TESTIMONY OF ROAD FOREMAN CONRAD. (P.28 –35)

THE HEARING OFFICER WAS IN ERROR WHEN HE BASED HIS IRRATIONAL DECISION ON IRRELEVANT TESTIMONY ABOUT THE CLAIMANT'S SHOE. THE CLAIMANT'S SHOE HAS ABSOLUTELY NOTHING TO DO WITH THE CHARGES THAT THE CLAIMANT WAS BROUGHT UP ON. THE LOCAL CHAIRMAN WAS SO CERTAIN OF ITS IRRELEVANCE THAT HE DID NOT EVEN TRY TO JUSTIFY THE TESTIMONY BY CROSS EXAMINING THE CARRIER' S WITNESS ON THIS POINT.

THE HEARING OFFICER'S DECISION WAS BASED ON THE IRRATIONAL AND IRREVERENT THEORY THAT THE CLAIMANT FAKED HIS INJURY, AS PROVED BY THE BOTTOM OF THE 2ND PAGE OF THE DECISION LETTER; " BEFORE SUSTAINING THIS ALLEGED INJURY. "

THE HEARING OFFICER'S DECISION WAS IN ERROR WHEN FAILED TO REALIZE THAT ROAD FOREMAN CONRAD ALSO SAW THAT THE CLAIMANT'S TOE WAS POINTING TO THE LEFT AND NOT JUST THE CLAIMANT'S ASSERTION. (P. 18, 19)

THE HEARING OFFICER'S DECISION WAS IN ERROR WHEN HE REASONED THAT THE CLAIMANT SHOULD HAVE OBSERVED THE UNSAFE CONDITION. TESTIMONY PROVED THAT IT WAS IMPOSSIBLE TO SEE NOT ONLY THE EQUIPMENT LOCKER, BUT ALSO THE PRY BAR, WHICH WAS RECESSED IN THE LOCKER BEHIND THE FIRE EXTINGUISHER. (P. 20 – 22, 46, 47)

NOTWITHSTANDING THE ABOVE ARGUMENTS, THE ORGANIZATION FIRMLY BELIEVES THAT CARRIER'S DISCIPLINE OF 5 DAYS SERVED WAS IN VIOLATION OF RULE 25 k-1, BY NOT HOLDING THE 5 DAYS IN ABEYANCE.

PURSUANT TO THE ABOVE FACTS AND OTHERS CONTAINED IN THE TRANSCRIPT OF THE INVESTIGATION, THE OR4GANIZATION IS REQUESTING THE CLAIMANT BE EXONERATED OF ALL ALLEGED RULE VIOLATIONS AND THAT ALL DISCIPLINE BE EXPUNGED FROM HIS RECORD AND THAT HE BE MADE WHOLE FOR ALL LOST EARNINGS DUE TO THE INVESTIGATION AND SUSPENSION.

SINCERELY,

CHARLIE YURA 838