

Sustain, Deny, or Modify 2026 – What Would You Do?

Scenario #1 – You Did What? (Andrée McKissick)

Claimant Conductor Sandra Jones and her crew were instructed to spot and uncouple 51 cars for unloading, and brake inspection and repair. Because the track was on a grade, it was necessary to shove the cars with a partial automatic brake application to ensure they were properly spotted. Claimant Jones then applied the appropriate number of handbrakes, and uncoupled the locomotive.

Meanwhile, Claimant Brakeman Bryant, an employee with less than a year's service, was on the other end of the movement, protecting the shove. Claimant Bryant thought that the screeching noise he heard during the shove was a symptom of a brake problem and, in his inexperience, Bryant released the air brakes by bleeding them to stop the noise. However, he forgot to convey this information to the Conductor at the opposite end of the move.

Later that night, the cars ran out of the track, collided with another train and derailed. Both employees were dismissed by the Carrier for failing to properly secure the cars.¹ Claimant Jones also was found to have failed to conduct a securement test. The Organization argued that Claimant Jones did secure the car with both air brakes and mechanical handbrakes, as required by Carrier rules, and cannot be blamed for not knowing that Claimant Bryant had bled off the air brakes. The Organization also argued that Bryant was guilty of no more than an honest mistake, and dismissal was excessive punishment for a mere mistake.

Additional facts reveal that at the Investigation, the Hearing Officer failed to make procedural rulings based on the evidence presented. In addition, a damage inspection report which the Carrier relied upon was not performed until six days after the accident occurred. Lastly, the Carrier asserts that the Organization failed to confer with them within the required sixty (60) days-time limit, violative of Rule 11.8 of the CBA. The Organization retorts that they requested several days, but the Carrier was unavailable on those occasions.

Questions

- 1 (a) How would you rule on the Carrier's argument regarding the Organization's failure to technically comply with the sixty (60)-day rule?
- 1 (b) Would you look at the past practice of the Parties and factor that into your decision?
- 2 If you were the Referee, how would you rule on the merits and why?
 - (a) Would you uphold the Jones termination or would you consider the due process issues and reinstate her? Was the Bryant termination excessive?
 - (b) Would you reinstate Conductor Jones with all backpay and benefits, as requested by the Organization?

¹ The crew was governed by Carrier Air Brake Rules and Instructions Rule 7.6, which states "Do not depend on air brakes to hold any power or railcars in place when left unattended. Handbrakes must be applied whenever railcars are separated from any power. The handbrake must be applied to the bottom car. ... Apply a sufficient number of handbrakes to prevent movement."

Scenario #2 – Does the Punishment Fit the Crime? (Lamont Walton)

Claimant Danny Linn is employed by the Commuter Railroad as a Foreman; he also is the President of the Organization's Local on that property. On September 1, 2023, he received a letter instructing him to attend a formal investigation on October 5, 2023, at 9:00 a.m. for the purpose of developing the facts and assessing responsibility, if any, in connection with his alleged carelessness while driving a company vehicle in the coach yard which sustained damage on September 1, 2023. He was charged with alleged violation of Safety Rules and Procedures, Rule 107.2 and 107.5.

The Accident Report concerning the incident indicates that Claimant was driving a company truck and struck a set of engine wheels as he was backing up. The Report described the damage as "a small dent on the rear, passenger side quarter panel." The value of the damage was listed as \$100.00. To his credit, the Claimant followed proper procedure in reporting the incident.

The Carrier argues that the fact that the Claimant reported the incident does not exonerate him. His failure to avoid the accident establishes that he did not exercise proper care in operating the vehicle. The Carrier assessed a five-day actual suspension.

The Organization counters that the overriding question in this case concerns the measure of discipline, after it was established that the Claimant was responsible in connection with the charges. It acknowledges that the Carrier had the prerogative to impose discipline, provided it is not arbitrary, excessive or an abuse of the Carrier's discretion. In this case, the Claimant had a good record of 17 years of service and only one previous entry of discipline — a one-day deferred suspension about four years prior to the incident. Therefore, the Organization argues, a 5-day actual suspension for a minor collision that caused \$100.00 of damage is excessive.

Affirm, Deny or Modify?

Scenario #3 – No Exceptions (Earlene Baggett-Hayes)

A 15-year train maintenance employee had a history of attendance discipline. She signed a 24-month Last Chance Agreement. The agreement stated that any unauthorized absence or failure to provide timely medical documentation would result in an automatic discharge, no exceptions.

About fourteen months after signing the Last Chance Agreement, the employee emailed her supervisor at the start of her shift on a Wednesday at 5:00 a.m. to report that she had taken her husband to the clinic because of his heart palpitations. Thirty minutes later, a follow-up email stated that when she arrived at the clinic, she was instructed to take her husband to the hospital right away, and he was admitted on that same day.

The employee had worked the prior Monday and Tuesday. Although she returned to work on Thursday, she could not obtain a medical note until Friday because the clinic's portal was down, and the hospital could not verify the treatment until then. She did not communicate with anyone in Management on Thursday regarding her Wednesday absence. Friday was a holiday, and the employee was not due back at work until the following Monday, when she turned in the medical note regarding her husband. The employee was discharged for violating the Last Chance Agreement.

Affirm, Deny or Modify?

Now, let's add a twist:

Same facts as above, except that the Last Chance Agreement negotiated by the Parties had not yet been executed. The Carrier argues that the emails between the Parties regarding the Last Chance Agreement establish that the Parties had a meeting of the minds on the matter, and that it was entitled to apply it against the Claimant.

What is your ruling on this argument?

Scenario #4 – When is a Stop signal violation not a Stop signal violation? (Ronnie Rhodes)

Claimant Engineer Brown was suspended for 60 days for going by a red (Stop) signal and occupying the Main Track without proper authority or permission on August 14, 2010. In addition, his Locomotive Engineer Certification was revoked for the first 30 days of the suspension pursuant to the procedures set forth in governing Federal Railroad Administration (“FRA”) regulations published at 49 C.F.R. Part 240. On November 2, 2011, the FRA’s Locomotive Engineer Review Board denied a Petition for Review filed by the Organization, which sought to overturn the revocation. A FRA Administrative Hearing Officer denied a subsequent appeal on August 2, 2012, and no further action was taken regarding the revocation. The case reaches the First Division four years later.

The Carrier argues the claim should be denied in its entirety. Its principal arguments in support of that position are: (1) there is substantial evidence of the Claimant’s culpability; (2) the discipline assessed was warranted and commensurate with the seriousness of the offense; and (3) there were no procedural violations that would warrant voiding the discipline.

The Organization contends the claim should be sustained in its entirety. Its principal arguments in support of that position are: (1) the Carrier initially charged the Claimant with going by a red signal and then improperly varied the charge during the Investigation when the Carrier was unable to prove the Claimant went by the red signal; and (2) evidence at the Investigation proved the incorrect alignment of the insulated joints (“IJs”) was the proximate cause of the incident.

The Investigation Transcript established the following critical facts:

1. The IJs were not correctly aligned, meaning that the Claimant’s locomotive would show in the Computer-Aided-Dispatching (CAD) system as having exited the block when, in fact, it was still occupying the Operating System (OS).
2. The Claimant reversed direction within the OS without requesting authority or permission to do so, thereby violating GCOR Rule 6.4.2, which the Claimant was not charged with having allegedly violated.

Affirm, Deny or Modify?

Explain the significance of misalignment of insulated joints.

If you sustain the Claim, is the Claimant entitled to backpay for the period during which his Certification was revoked?

Scenario #5 – The Law of the Shop, or the Law of the Land?

Claimant Barkley is an auditor with more than 20 years of service; he is a Certified Public Accountant. He suffers from panic attacks that he cannot control, and is attending private therapy sessions to attempt to reduce or control the panic attacks. His physician recommends that Barkley be permitted to work from home until the panic attacks subside, and wrote a letter to that effect to the Carrier. The Carrier denied the requested accommodation.

The Organization contends that the Carrier's denial is unreasonable, and that it violates CBA Article I, Section D, which states:

“The provisions herein will be applied without discrimination based on race, color, creed, religion, national origin, age, sex, disability, marital status, sexual orientation, citizenship status or any other characteristic protected by law.”

The remedy proposed by the Organization is that the Claimant be awarded one day's pay for each day he is required to work in his office—rather than at his home—as a means of enforcing the CBA.

The Carrier counters that this is a question of federal law, and not the Collective Bargaining Agreement. Even if that were not so, the remedy sought by the Organization is not provided for in the Agreement, and is punitive in any event.

Who would sustain this Claim, and why?

Who would deny this Claim, and why?

Scenario #6 – A Fallacious Medical Leave Adventure?

Claimant M. I. Faking was approved for intermittent FMLA leave for his own serious medical condition, with a maximum usage of two absences per year with a duration of one day for appointments, with weekend use unlikely, and six absences per month with a duration of one day for flare-ups, with possible weekend use. Claimant had laid off FMLA on portions of the Memorial Day weekends of 2020, 2021, and 2023, and Carrier engaged private investigators to conduct surveillance of him around the Memorial Day weekend in 2025. On May 25, 2025, the day before Memorial Day, Claimant laid off FMLA at 1100 hours. He was observed later driving a classic convertible to various locations, including a restaurant and a farmer's market, and he returned to his residence at 1900 hours. Claimant then worked his normal assignment on May 26, 2025, Memorial Day.

At the Investigation, Claimant testified he experienced a flare-up prior to his layoff; after he laid off, he utilized the prescribed treatments and procedures and took a nap. He also stated that his doctor recommended him to be off a full 24 hours for each flare-up to prevent an early relapse. He testified that after he awoke on the date in question, his daughter asked him if he would like to get some lunch, and because the weather was nice, they drove his convertible to a restaurant, after which they drove through the countryside and stopped at the farmer's market before returning home. Claimant also produced a letter from his doctor which stated that he had reviewed a timeline of events of May 25 and 26 Claimant had provided him with; he found it to be consistent with Claimant's condition for FMLA use and there was no reason to believe Claimant violated his FMLA leave.

The Carrier maintains that the record contains substantial evidence to support the discipline assessed. It states that the evidence is straightforward, and that there can be no dispute that Claimant blatantly misrepresented the facts surrounding his FMLA layoff on May 25, 2025. The Carrier contends that the pattern Claimant had demonstrated by laying off on Memorial Day weekends cannot be disputed, and it states that the accuracy of its prediction that Claimant would lay off FMLA in 2025 speaks for itself. It avers that Claimant's use of FMLA leave to joyride in his classic convertible with his family this is a textbook example of FMLA abuse, which is contrary to GCOR 1.6, which requires that employees not be dishonest. The Carrier asserts that Claimant's explanation of having experienced a flare-up in the morning warrants skepticism. Also, the circumstances behind the doctor's note are not above suspicion because it is possible Claimant could have provided a different timeline of events to his doctor than the one he provided at the Investigation. Lastly, dishonesty about any job-related subject is grounds for stand-alone dismissal, including in cases involving FMLA abuse.

The Organization maintains that the Carrier did not meet the burden of proof to establish just cause for the dismissal. It states that there is no support for the proposition that Claimant had established an improper pattern of FMLA layoffs. The Organization points out that Claimant worked on Memorial Day, and avers that the Sunday Claimant laid off is no different from any other Sunday. Moreover, the Carrier provided no evidence that contradicts Claimant's recitation of events, or his physician's findings. The Organization asserts that the Carrier has improperly inserted itself between Claimant and his physician. Nothing in the FMLA certification required Claimant to remain at home during the 24-hour increments for which leave was authorized, and the Organization avers that pursuing lifestyle activities such as driving to eat a meal does not conflict with Claimant's undisputed testimony that he had experienced a flare-up on the date in question. Claimant is a 20-year employee with a single discipline mark for attendance ten years earlier and one missed call five years earlier. The Organization states that there is no basis for assessment of any discipline, much less standalone dismissal. It maintains that the Carrier has acted in an arbitrary and capricious manner, and urges that the claim should be sustained.

Has the Carrier produced substantial evidence to prove that Claimant was dishonest about his FMLA use? How important is the doctor's note? Would your decision change if it was not produced? How important is the evidence that Claimant had laid off on Memorial Day weekend in prior years? What consideration do you give to Claimant's years of service and prior discipline record?

Scenario #7 – Everyone’s Worst Nightmare

On the date of the incident, Claimant I. M. Bogus, a 25-year employee in the Carrier’s Operating Department with no prior discipline, was assigned to a rotating freight pool and lodged at the designated away-from-home terminal facility, awaiting a call for service. In the middle of the afternoon, law enforcement officers forcibly entered the Claimant’s motel room, arrested him, and took him to police headquarters for booking. While at police headquarters undergoing that process, the Claimant, who had not informed the Carrier of his circumstances, missed a call for service. Subsequent inquiry by Carrier Special Agents revealed that the Claimant had been arrested on felony charges stemming from his alleged sexual abuse of children. Claimant was directed to attend a Formal Investigation to develop the facts and determine his responsibility, if any, in connection with those charges citing alleged potential violations of GCOR 1.6 – Conduct, 1.9 – Respect of Railroad Company, and 1.16 – Subject to Call.

Carrier’s principal witness was the Division Superintendent, who testified he first learned of the Claimant’s arrest and the charges the day after the arrest, by watching a television broadcast from a home terminal location station and reading an article on the station’s website. The Witness further testified that the home terminal location is a large railroad town where everyone knows who works for the railroad. The news headline read “Local Man Accused of Propositioning Girl He Thought Was 13 Years Old” and identified the Claimant by name. After the story broke, the Witness testified that anonymous calls were received at the Carrier’s home terminal location offices, in which callers expressed the view that the Carrier shouldn’t retain “perverts” in its employ. The Witness also entered into the record the Criminal Complaint filed by the District Attorney’s Office, the Affidavit for Probable Cause filed by the arresting officer, the Order of the District Court Judge, and the Conditions for Bail, which were based, in part, on a second affidavit by the arresting officer.

The Affidavit for Probable Cause signed by the arresting officer stated that a Task Force composed of agents from the local Police Department, the Federal Bureau of Investigation, and the County Sheriff’s Office was conducting a joint investigation into sexual abuse of children in violation of applicable state law. The investigation developed what was believed to be probable cause to arrest the Claimant on the felony charge of sexual abuse of children. As part of that investigation, an undercover agent with the Department of Criminal Investigations began chatting with the Claimant via an online social media application. During the chat, the agent posed as a 13-year-old girl and identified herself to the Claimant as such. The Claimant discussed meeting the agent to engage in specific sexual acts. The Affidavit recounted, in graphic and disturbing detail, portions of that and similar conversations, some dating back two years, between the Claimant and undercover agents posing as underage females. The Affidavit to the Court regarding conditions for bail stated that after the arresting officer Mirandized the Claimant, he “...waived his right to remain silent. During the interview, he admitted to having sexual conversations with underage girls; admitted to agreeing to meet with an underage female today; and admitted sexual enticement occurred. He advised that he typically has conversations and deletes the applications. He further explained he’s been talking to underage girls for about two years”

The Carrier cited the above as providing substantial evidence that Claimant violated the cited GCOR rules. It also pointed to testimony that the Claimant’s admitted conduct could subject the Carrier to criticism if it continued to employ him. Conceding that the incident occurred while the Claimant was off duty, the Carrier found the misconduct and subsequent arrest were connected to the Claimant’s employment, as both occurred while the Claimant was lodged at a Carrier-provided hotel at the away-from-home terminal for the Claimant’s pool assignment, where he was subject to the Carrier’s rules of conduct. Regarding the discipline assessed, the Carrier maintains that conduct violations of this gravity are grounds for stand-alone dismissal.

The Organization took exception to the Carrier’s action in this matter because: (1) the Claimant was neither on duty nor on Carrier property at the time of the incident(s) giving rise to the charge or his subsequent arrest;

(2) the Claimant's arrest and felony charge had no nexus to his employment and did not adversely affect the interests or reputation of his employer; and (3) disciplining the Claimant before his conviction on the charge fatally flawed the Carrier's case. The Organization contends that Carrier's finding in this matter was premature and that it prejudged the Claimant, and therefore his resulting dismissal was arbitrary and capricious. Accordingly, the Organization requests that its claim be fully sustained.

Issues:

- 1. Was the Carrier justified in dismissing the Claimant?*
- 2. What factors most influenced your decision?*
- 3. Does the fact that he had not yet had his day in court have any bearing on your decision?*
- 4. Does the Claimant's tenure and pristine disciplinary record warrant any consideration?*

Scenario # 8 – I Just Found Out

A crew member was unable to lace the air hoses between two double shelf tank cars, despite several attempts to do so. The Foreman was able to successfully lace the air hoses using a different technique than the crew member had used; however, in doing so he “felt a pull between my bicep and top of forearm in my left arm and it was painful.” This injury resulted in Emergency Room treatment and necessitated the filing of an Injury Report. An inspection of the cars conducted after the incident disclosed no defects.

The Carrier charged the Foreman with having violated its General Rule regarding working safety, as revised by an Operations Bulletin that took effect four (4) days prior to the incident, which that stated:

“Employees must not make repeated attempts to operate tools, equipment, or appliances (e.g. switches, derails, handbrakes, cut levers, bleed rods, doors, brake sticks, etc.) that cannot be operated with a normal level of exertion or otherwise are, are not in proper working order. Such repeated attempts must be avoided.”

The Carrier averred that, when the crew member was unable to lace the hoses despite multiple attempts, the crew should have requested that the equipment be inspected to ascertain whether there was a defect. Claimant could not have known that a subsequent inspection would disclose no defects in the cars, and should have taken the safe course by complying with the Operations Bulletin. Accordingly, the 10-day record suspension assessed to the Claimant was not arbitrary, excessive or an abuse of discretion.

The Organization countered that the Foreman was injured on his first attempt to lace the hoses and, therefore, the General Rule had not yet been implicated. Even if that were not the case, because the Operations Bulletin had been in effect for only a few days, the Carrier cannot show that the Claimant knew or should have known about the new restrictions, much less than that he could be subject to discipline for non-compliance. The Carrier failed to satisfy its burden of proof, and—even if that was not the case—the discipline was excessive.

Who would sustain this Claim, and why?

Who would deny this Claim, and why?

Which of you would consider the fact that the avoidance requirement had come into existence a mere four (4) days prior to the incident to be a mitigating factor?

Scenario #9 – All In the Family

According to the Carrier, Claimant Heeza Crook—at the time a 29-year employee—fabricated and reported an on-the-job injury in an apparent effort to avoid performing his duties and receive pay and benefits for not working, and was dismissed for just cause. The transcript of the Investigation, which required nine sessions spread over a 6-month period to complete, establishes that after complaining about being assigned to operate a certain locomotive, the Claimant deliberately bumped his head on an overhead light fixture, and then claimed personal injury on that account. Thereafter, he made further false and conflicting statements regarding the circumstances surrounding the alleged injury in an effort to support his story. Subsequent examination of the locomotive by the Carrier’s President, Superintendent, General Car Foreman, Locomotive Supervisor, the Conductor on Claimant’s crew and two outside experts proved the Claimant’s fraud. Evidence adduced at the Investigation establishes that there is a normal way of standing up from a sitting position, and there is also a contrived or unnatural way of standing which involves micromanaging the process so as to consciously or deliberately force the body to contort into positions other than those that are automatic, as is the case here.

The Organization countered by alleging numerous reversible procedural flaws during the Investigation, including: violation of time limits; multiple unilateral postponements with explanation or concurrence; improper removal from service in violation of the CBA; coercion of a statement from another Carrier employee; misconduct by the Hearing Officer, including deferring to the Carrier’s President for rulings on certain objections, denial of evidence and witnesses proffered by the Organization; and initial refusal to conference, followed by designating a primary witness as its conference representative. On the merits, the Organization averred that the Carrier failed to satisfy its burden of proof by substantial evidence. It pointed out that the Carrier’s claim that it was “common knowledge” the Claimant intended to injure himself doesn’t square with the fact that the Yardmaster had never heard any such thing, and the Claimant’s supervisor (and brother-in-law) testified that he wasn’t aware of it until a week after the incident. Moreover, Carrier supervisors testified to the Claimant’s injury being nothing more than an “ingrown hair”, which meant that the Claimant staged an accident in which he failed to hurt himself and reported it anyway. That testimony was credited by the Hearing Officer even though it was contradicted by the contemporaneous medical records. And the testimony by the Carrier’s medical expert, who never examined the Claimant, conflicted with the testimony of its mechanical engineering expert.

Who would sustain this Claim? Who would deny this Claim? And who has a queasy feeling inside?

If the submissions you received included a nearly 700-page transcript and almost 130 exhibits, would you go back and reread the Organization’s procedural objections?

How would you handle the application of standard arbitral holdings from Class I carriers about the impropriety of the subordinate of a witness handling a critical aspect of the process to this short line property?

If you suspect that you could decide this matter procedurally, without considering the merits, or on the merits, without addressing the procedural objections, would you do that? Or would you take the time to address the Parties’ positions and this record in full detail?

What about if you were aware that the brother-in-law supervisor was involved in a stalking incident that led to the Claimant being dismissed once before, in which the Carrier was sternly warned by the Neutral in the case that returned him to service?

And what about if part of the excluded evidence was testimony from the Claimant’s wife on the subject of how her brother had long been targeting her husband?

Scenario #10 – How Broad Is an Arbitrator’s Remedial Authority?

After an Investigation, the Claimant was found guilty of siphoning diesel fuel from Carrier locomotive 252 into a tank on his personal flatbed truck and leaving the Carrier’s property with the siphoned fuel. As a result, he was dismissed from the Carrier’s service. The Organization appealed, contending the discipline assessment was arbitrary and capricious. The Carrier maintained that there was substantial evidence adduced during the Investigation supporting that the Claimant engaged in the charged misconduct and the discipline assessment was commensurate with the rule violation. The case was placed in line to be adjudicated by the Division.

Subsequent to the issuance of discipline in this matter, and prior to the case being presented to the Division, the Claimant faced criminal charges. He was charged with theft in excess of \$500 — a Class 3 Felony — in connection with the siphoned fuel incident. The public court record revealed that the Claimant admitted guilt to the theft charge and was accepted into the County’s First Offender Program, a program designed to provide first-time, non-violent felony offenders with an opportunity to prevent a conviction from being permanently entered on their record. As a condition of this program, the Claimant was required to write a letter to the Carrier confessing to and apologizing for the fuel theft.

On the day of the Arbitration Hearing in this matter, it was determined that although the parties and the Referee had copies of the Investigation transcript, the Board was not provided a copy of the transcript. Rule 1(d) of the Board’s June 23, 2003, Uniform Rules of Procedure provides: “In discipline cases, the Investigation Transcript shall be furnished to the Board as an Exhibit to the Carrier’s Submission.”

How many of you think the arbitrator has the authority to take the arbitral equivalent of “judicial notice” of the public court records detailing the felony charges and guilty plea, even though they were created after the discipline was assessed and are not reflected in the transcript?

Does an arbitrator’s broad remedial authority provide an avenue for addressing the Carrier’s inadvertent noncompliance with Uniform Rule of Procedure 1(d)?

How would you rule?

Scenario #11 – Rain, Rain Go Away!

A train crew operating over a territory that had sustained heavy rainfall is issued a Procedure FF (flash flood) between Mileposts 12 and 18 on their Track Warrant for movement. Such requires that the crew comply with GCOR Rule 6.21 – Precautions Against Unusual Conditions, which reads as follows:

In unusually heavy rain, storm, or high water, trains and engines must approach bridges, culverts, and other potentially hazardous points prepared to stop. If they cannot proceed safely, they must stop until it is safe to resume movement.

At about 2:30 a.m., in the vicinity of Milepost 15, the train was operating at 23 mph (track speed 40 mph), the locomotive's dynamic braking system was engaged, and the crew was slowing to be prepared to stop short of the bridge at Milepost 16.5 (a potentially hazardous point as contemplated by Rule 6.21). Suddenly the train traversed a severe dip in the track. The Engineer immediately made an emergency brake application. A subsequent inspection of the train revealed that 13 cars were derailed. The cause appeared to be compromised track-age, where the rail and ties were intact, but the underlying roadbed had been eroded.

The Carrier argued the crew was careless and negligent, in violation of GCOR Rule 1.6, in failing to operate their train at a speed that would allow stopping short of the washout. The Organization countered that the incident was unavoidable and contended that the crew had done nothing wrong as the washed-out track location did not concern a bridge, culvert, or other "potentially hazardous point" as contemplated by Rule 6.21.

Are the above facts sufficient for you to conclude that the crew was required by rule to stop short of all washouts, whether or not they could be seen?

How would you rule?

Scenario #12 – Plus or Minus

The Claimant operated a fully loaded auto train measuring 9,868 feet. He attempted to slow the train from over 50 mph as he approached Flora. He then made a running release at a speed he testified was 21 mph, based on his speedometer. The train, of a length which the Claimant had never operated before, went into emergency, causing damage to a knuckle and a drawbar. The locomotive's event recorder data indicated the brakes were released at 19 mph. The Train Separation Report filled out by the Claimant indicated a speed range of 21 to 16 mph, but exact details were unclear. The Claimant reported he had concerns about the accuracy of the speedometer.

The Carrier noticed the Claimant to report to an Investigation to determine his responsibility concerning the damage to the train resulting from this incident. The Carrier's Rule 309 states the minimum allowable speed for a running release on a train over 9,000 feet long is 20 mph. The Investigation was postponed for three days by the Carrier. The Organization's request for a 10-day postponement to prepare the Claimant's defense was denied. The Hearing Officer denied requests for information, including event recorder data from the second locomotive, both before and during the Investigation. And he refused to allow the Claimant's Representative to admit the Federal Railroad Administration ("FRA") regulation governing speedometer inaccuracy as an exhibit.

The download from the lead locomotive shows a difference of 2 mph (from 21 to 19 mph) in one second, and does not show with certainty when the Claimant initiated the running release, or when the brake pipe pressure changed. The Carrier's Witness, a supervisor, was unfamiliar with the downloaded document and could not confirm its accuracy. The Organization's multiple requests to verify the accuracy of the locomotive download data were denied. The Hearing Officer instead filled in gaps in the Supervisor's testimony with his own opinion. The Hearing Officer also denied the Organization's requests to have documentation furnished concerning maintenance to, or calibration of, the speed recorder of the lead locomotive. The Claimant testified there was a problem with his speedometer and that he followed all rules and procedures to the best of his ability. The Hearing Officer did not permit the Organization's representative to ask certain questions of the Claimant and other witnesses, including how and why the Claimant may have done things differently.

As a result of the Investigation, the Hearing Officer found the Claimant guilty of violating Rule 309.

Do you believe the Claimant received a fair and impartial investigation? Why, or why not?

Was it appropriate for the Hearing Officer to "fill in gaps in the Supervisor's testimony" concerning the event recorder data and its accuracy? If it wasn't, was it serious enough to constitute reversible error?

Do you believe that—based on the above facts—the Carrier satisfied its burden or proof? Why, or why not?

Scenario #13 – Out of Time

On May 1, 2024, Claimant Smith was working as a Conductor in the Carrier's Springfield Yard. Shortly after Claimant Smith tied up, a manager found a cut of 26 cars which had handbrakes applied on only two of the cars. Carrier rules regarding securement of equipment applicable to the Springfield Yard required at least five handbrakes to be applied to that many unattended cars. The manager reviewed records and determined that Claimant Smith was the last person to handle those cars. Consequently, by letter dated May 8, 2024, Claimant Smith was notified to attend an Investigation to determine the facts and his possible responsibility in connection with the improperly secured cars. The notice scheduled the hearing for May 11, 2024. On May 9, 2024, the Carrier issued a postponement letter, setting the hearing for May 15, 2024. The hearing was held that day. Claimant Smith was found to be in violation of the cited rules, and he was issued a 30-day suspension.

The applicable Agreement provides in part:

“Investigations will be held within ten (10) days of the time the railroad has sufficient knowledge of the incident to be investigated.”

The Agreement contains other time frames for issuing discipline and claim handling, as well, and it provides that “The time limits set forth above may be extended by mutual agreement.”

The Organization argues in its submission that the May 15 hearing was untimely in that it was not held within 10 days of the manager's knowledge of the incident to be investigated, and that the claim should be sustained on that basis alone. It notes that the objection was raised by Claimant's Representative during the Investigation, but that the objection was overruled by the Hearing Officer. The Organization also states that there is no indication that the Carrier sought an agreement to postpone the Investigation.

The Carrier replies that postponements of investigation are standard practice, and that there is no showing that Claimant or the Organization was prejudiced by the short postponement. It also argues that the issue of whether an agreement had been reached to postpone the Investigation was not fully developed during the Investigation, and that it is possible there had been informal discussion about a postponement which would satisfy the extension provision.

How would you address the Parties' arguments?

Would it make any difference if the Claimant's Representative did not raise an objection on that point during the Investigation, and the issue only arose during appellate handling?