

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6402
AWARD NO. 197, (Case No. 220)**

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

vs

**UNION PACIFIC RAILROAD COMPANY (Former Missouri Pacific
Railroad Company)**

William R. Miller, Chairman & Neutral Member
K. D. Evanski, Employee Member
K. N. Novak, Carrier Member

Hearing Date: June 4, 2013

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- 1. The discipline (dismissal) imposed on Mr. S. Bryant by letter dated June 30, 2011 for alleged violation of Rule 1.6 of the Union Pacific Operating Rules when he allegedly failed to act in a courteous manner was quarrelsome and negligent at approximately 16:30 hours on January 3, 2011, was without just and sufficient cause and in violation of the Agreement (System File F11-21/1559317).**
- 2. As a consequence of the violation referred to in Part 1 above, the Carrier must remove the discipline from Mr. Bryant's record and compensate him for all losses, including straight time and overtime wages, benefits, seniority rights and any other losses suffered as a result of the Carrier's unjust and improper discipline."**

FINDINGS:

Public Law Board No. 6402, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On January 10, 2011, Claimant was directed to attend a formal Investigation on January 25, 2011, which was mutually postponed until June 24, 2011, concerning in pertinent part the following charge:

"...to develop the facts and determine your responsibility, if any, in connection with your alleged failure to act in a courteous manner and protect your position

as a Track Foreman, on January 3, 2011, on Gang 8765, at Oklahoma City, Oklahoma, near Milepost 486, Oklahoma City Subdivision, at approximately 1630 hours.

These actions, if proven, are considered a violation of Rule 1.6 - Conduct, according to the Carrier's Code of Operating Rules, effective April 7, 2010. The discipline for this offense is a Level 5 - permanent dismissal under the UPGRADE policy."

On June 30, 2011, Claimant was notified that he had been found guilty as charged and was assessed a Level 5 discipline and dismissed from service.

The Board notes that this is the second of two dismissal cases involving the same Claimant, with the other case being Award No. 196, Case No. 219. Both cases have a commonality as they each arise from the same incident.

For the sake of brevity the Board will not reiterate the facts or the parties respective positions as they are essentially the same as presented in the aforementioned case. However, the Board notes that in the instant case the Carrier's emphasis was that the Claimant was allegedly discourteous and quarrelsome. It argued that Claimant was discourteous and quarrelsome when he refused to take a Drug and Alcohol test after being instructed to and when he refused to turn off his car engine and get out of the car when instructed. It further argued the discourteous and quarrelsome misconduct became exasperated when Claimant allegedly took a swing at Inspector Finnigan, who was allegedly trying to help keep Claimant safe. It asserted there was no excuse for the Claimant to throw a punch at his Supervisor.

In response to the Carrier's argument the Organization emphasized the fact that in both cases the Claimant was charged with violation of Rule 1.6 (Conduct) which shows the Carrier was attempting to add discipline upon discipline while subjecting the Claimant to double jeopardy. Additionally, it argued the testimony and two statements provided on the record affirmed that the Managers acted in a non-professional and unreasonable manner as they were engaged in the instigation of a verbal and physical confrontation including a car chase of the Claimant after he left the parking lot. It reasoned the Claimant should not be held to have acted in a negligent, discourteous or quarrelsome manner when the facts show the Supervisors were the instigators of the situation and, at the very least, were "fueling the fire" that elevated the incident.

The Board has considered the parties respective procedural arguments and decided on a non-precedential basis that those arguments will not settle this case and the merits will be reviewed. Additionally, the Board notes that it has thoroughly reviewed the transcript and record

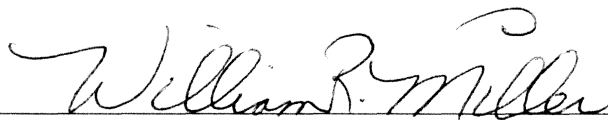
of evidence and it is determined that the Investigation and appeal process met the guidelines of the Agreement and Claimant was afforded all of his "due process" Agreement rights.

As stated in Award No. 196 of this tribunal involving the same Claimant and same incident the record is clear that the Claimant was involved in a situation that became highly charged and confrontational. The record substantiated that Carrier Officers attempted to physically restrain the Claimant and Claimant attempted to become physical as well. Substantial evidence was adduced at the Investigation that the Claimant was not courteous and that he should not have left the work site when he did, however, his failures are partially offset by the Carrier Officer's handling of the situation.

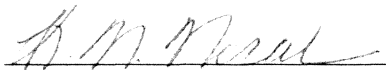
The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had approximately 32 years of service with an unblemished record. For the same reasons expressed in Award No. 196 the dismissal is reduced to a lengthy suspension and the Board finds and holds that the Claimant will be reinstated to service with seniority intact and benefits unimpaired with no back-pay. Prior to reinstatement Claimant should be evaluated by the Employee Assistance Program (EAP) because of his "panic attacks". The Board again emphasizes and forewarns the Claimant that after reinstatement to service he needs to be careful to adhere to all Carrier Rules, Safety Rules and instructions.

AWARD

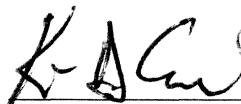
Claim partially sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed.



William R. Miller, Chairman



K. N. Novak, Carrier Member



K. D. Evanski, Employee Member

Award Date: Aug 2, 2012