

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad
(Former Missouri Pacific Railroad)

Case No: 101
Award No: 101

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

1. The Carrier's discipline (dismissal) of Mr. D. Rojo, by letter dated March 20, 2017, for alleged violation of Rule 1.6: Conduct - Dishonest, Rule 136.4: On-Track Safety Procedures and Rule 136.3.1: Job Briefing for Roadway Work Groups was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP966PA17/1687173D MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Rojo shall be immediately returned to service, have all mention of the charges and discipline removed from his personal record, provided with all lost compensation (i.e., straight time, overtime, holiday pay, vacation pay and hours and mileage for attending his investigation) and afforded all other rights and benefits contemplated by Rule 22."

FINDINGS:

Public Law Board No. 7633, upon the whole record and all the evidence, finds the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction of the dispute herein; the parties were given due notice of hearing before this Board and they participated therein.

The Claimant was disciplined pursuant to a Notice of Investigation dated March 20, 2017, Investigation held March 24, 2017, "... to develop the facts and determine your responsibility, if any, in connection with the below charge. On 03/14/2017, at the location of Emerson, TX, near Milepost 525.75, Sanderson Subdivision, at approximately 12:38 hours, while employed as a Trk Foreman, you allegedly released track authority while still occupying the track. Additionally, you were allegedly dishonest concerning the event when questioned by

the Dispatcher. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct – Dishonest; 136.4: On-Track Safety Procedures; 136.3.1: Job Briefing for Roadway Work Groups. Additionally, **Rule 1.6: Conduct** stipulates that any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated. Under the MAPS Policy, this violation is a Dismissal event. Based upon your current status, if you are found to be in violation of this alleged charge, Dismissal may result.”


In a discipline letter dated April 13, 2017, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: On 03/14/2017, while employed as a Trk Foreman, you released track authority while still occupying the track. Additionally, you were allegedly dishonest concerning the event when questioned by the Dispatcher. This is a violation of the following rule(s) and/or policy: 1.6: Conduct – Dishonest; 136.4: On-Track Safety Procedures; 136.3.1: Job Briefing for Roadway Work Groups. Additionally, **Rule 1.6: Conduct** stipulates that any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated. Based on your current record, you are hereby dismissed from all service with the Union Pacific Railroad.”

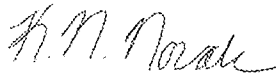
The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties’ respective positions, whether or not specifically addressed herein.

There is substantial evidence in the record to uphold the Carrier’s determination of culpability. However, the mitigating factors proven by the Organization persuade the Board that termination is excessive under the facts and circumstances of this record. Claimant is reinstated to service with full seniority unimpaired, but without back pay, and is disqualified from performing track and time authority until such time as he demonstrates qualification to do so.


AWARD:

Claim sustained in accordance with the Findings. The Carrier is ordered to make the Award favorable to the Claimant effective on or before 30 days following the date below.


Robert Grey
Neutral Member
Dated: March 28, 2019



Katheirne Novak
Carrier Member



Andrew Mulford - 3/28/19
Organization Member