

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad  
(Former Missouri Pacific Railroad)

Case No. 102  
Award No. 102

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

1. The Carrier's discipline (dismissal) of Mr. D. Jones, by letter dated June 30, 2017, for alleged violation of Rule 56.1.3: Compromising Signal Safety System was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP969PA17/1690504D MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Jones 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 May 22, 2017, Investigation held June 13, 2017, "... to develop the facts and determine your responsibility, if any, in connection with the below charge. On 05/11/2017, at the location of Corsicana, TX, near Milepost 209.94, Ennis Subdivision, at approximately 09:00 hours, while employed as a Trk Foreman, you allegedly failed to follow necessary procedures when performing crossing work at Milepost 209.94, which resulted in false activation of multiple crossings. This is a possible violation of the following rule(s) and/or policy: 56.1.3: Compromising Signal System Safety.

Under the MAPS Policy, this violation is a Critical 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 June 30, 2017, the Carrier found that “... the evidence more than substantially supports the charges against you. On 05/11/2017, while employed as a Trk Foreman, you failed to follow necessary procedures when performing crossing work at Milepost 209.94, which resulted in false activation of multiple crossings. This is a violation of the following rule(s) and/or policy: 56.1.3: Compromising Signal System Safety. Based on your current record, you are hereby dismissed from all service with the Union Pacific Railroad.”

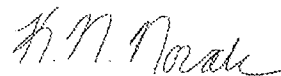
The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, 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.

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



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Katheirne Novak  
Carrier Member



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Andrew Mulford - 3/28/19  
Organization Member