

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad
(Former Missouri Pacific Railroad)

Case No. 103
Award No. 103

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

1. The Carrier's discipline (dismissal) of Mr. J. Racey, by letter dated July 6, 2017, for alleged violation of Rule 1.6: Conduct - Negligent, 42.2.2: Other Speed Requirements and Rule 1.13: Reporting and Complying with Instructions was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP970PA17/1690505D MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Racey shall '... return to work with all vacation and seniority rights unimpaired, that the charges and discipline be removed from his personal record, and that he be compensated for any lost time such as straight time, including overtime, holidays, per/diem, rest day travel allowance, travel expenses and mileage for attending this hearing due to discipline issued in connection with these charges and that would have normally been covered by the Carrier benefits.' (Employees' Exhibit 'A-2')."

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 June 14, 2017, Investigation held June 20, 2017, "... to develop the facts and determine your responsibility, if any, in connection with the below charge. On 6/01/2017, at the location of Flatonia, TX, near Milepost 120.0, Glidden Subdivision, at approximately 05:40 hours, while employed as a M/O (Br) Bal Reg, you allegedly were negligent when you failed to control the set of machines you

were responsible for, resulting in an on track collision. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct – Negligent; 42.2.2: Other Speed Requirements; 1.13: Reporting and Complying with Instructions. 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 July 6, 2017, the Carrier found that “... the evidence more than substantially supports the charges against you. The following charge has been sustained: On 6/01/2017, while employed as a M/O (Br) Bal Reg, you were negligent when you failed to communicate and take action to prevent the operator of the attached machine to hit the rear of truck parked on the track. This is a violation of the following rule(s) and/or policy: 1.6: Conduct – Negligent; 42.2.2: Other Speed Requirements; 1.13: Reporting and Complying with Instructions. 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.”

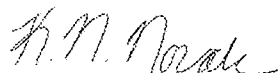
The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, 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 discipline determination. The Organization’s defenses are not persuasive. The discipline assessed by the Carrier was not arbitrary, capricious, or an abuse of discretion under the facts and circumstances of this record. Therefore, it will not be disturbed by this Board.


AWARD:

Claim denied.


Robert Grey
Neutral Member
Dated: March 28, 2019



Katheirne Novak
Carrier Member



Andrew Mulford - 3/28/19
Organization Member