

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad
(Former Missouri Pacific Railroad)

Case No. 106
Award No. 106

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

1. The Carrier's discipline (dismissal) of Mr. Q. Kyle, by letter dated June 2, 2017, for alleged violation of Rule 1.6: Conduct - Quarrelsome and the Workplace Violence Policy was unwarranted, arbitrary and in violation of the Agreement (System File UP702SN17D/1691024D MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant Q. Kyle 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 9, 2017, Investigation held May 17, 2017, "... to develop the facts and determine your responsibility, if any, in connection with the below charge. On 05/04/2017, at the location of Marshall, TX, near Milepost 65.5, Little Rock Subdivision, at approximately 10:00 hours, information came forward that suggests that while employed as a M/O (Ats) Tamper, you allegedly were quarrelsome and created a hostile workplace 04/17/2017 and 05/02/2017. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct – Quarrelsome; Workplace Violence Policy. 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 June 2, 2017, the Carrier found that “... the evidence more than substantially supports the charges against you. The following charge has been sustained: On 05/04/2017, while employed as a M/O (Ats) Tamper, you were quarrelsome and created a hostile workplace 04/17/2017 and 05/02/2017. This is a violation of the following rule(s) and/or policy: 1.6: Conduct – Quarrelsome; Workplace Violence Policy. 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 based upon the seriousness of Claimant’s proven culpable Rule 1.6 Quarrelsome conduct. Additionally, with regard to quantum of penalty (not culpability), the Board notes Claimant’s prior return to service without back pay for a previous Rule 1.6 Quarrelsome violation (*see*, PLB 6402 Award No. 200). Therefore, the Carrier’s determination will not be disturbed by this Board.

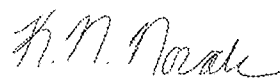
AWARD:

Claim denied.

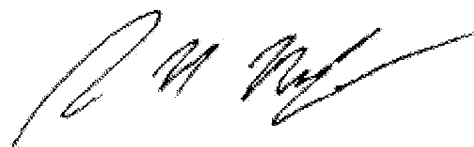


Robert Grey
Neutral Member

Dated: March 28, 2019



Katheirne Novak
Carrier Member



Andrew Mulford - 3/28/19
Organization Member