

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad Company  
(Former Missouri Pacific Railroad Company)

Case No: 110  
Award No: 110

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

1. The Carrier's discipline (dismissal) of Mr. B. Vedder, by letter dated September 8, 2017, for alleged violation of Rule 1.6: Conduct - Careless, Rule 42.2.2: Other Speed Requirements and Rule 136.7.5: Safe Traveling Distance Between Machines was unwarranted, arbitrary and in violation of the Agreement (System File UP980PA17/1695863 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Vedder shall '... be allowed to 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 August 4, 2017, Investigation held August 22, 2017, *"to develop the facts and determine your responsibility, if any, in connection with the below charge. On 07/26/2017, at the location of Lufkin, TX, near Milepost 100.1, Lufkin Subdivision, at approximately 08:30 hours, while employed as a M/O*

*(Mc) Multi Cr, you allegedly were careless in the operation of your machine when you failed to stop within half the distance and collided with the machine in front of you. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct – Careless; 42.2.2: Other Speed Requirements; 136.7.5: Safe Traveling Distance Between Machines. 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 September 8, 2017, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: On 07/26/2017, while employed as a M/O (Mc) Multi Cr, you were careless in the operation of your machine when you failed to stop within half the distance and collided with the machine in front of you. This is a violation of the following rule(s) and/or policy: 1.6: Conduct – Careless; 42.2.2: Other Speed Requirements; 136.7.5: Safe Traveling Distance Between Machines. 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 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.

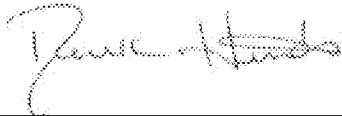
There is substantial evidence in the record to uphold the Carrier’s determination of culpability. However, the mitigating factors proven by the Organization persuade the Board that termination is excessive under the facts and circumstances of this record. Claimant is reinstated to service with full seniority and benefits unimpaired, but without back pay.

AWARD:

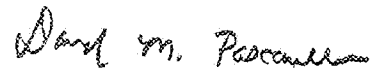
Claim sustained in accordance with the Findings. The Carrier is ordered to make the Award favorable to the Claimant effective on or before 30 days following the date below.



Robert Grey  
Neutral Member  
Dated: October 23, 2019



Derek Hinds  
Carrier Member



David M. Pascarella  
Organization Member