

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: 111
Award No: 111

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

1. The Carrier's discipline (dismissal from service) of Mr. N. Gustin, Jr., by letter dated July 12, 2017, for alleged violation of the UPRR Drug and Alcohol Policy Rule 1.5 was unwarranted, arbitrary and in violation of the Agreement (System File UP211KM17D/1692362 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant N. Gustin, Jr. shall:

'... be made whole for all financial losses as a result of the violation, including compensation for the straight time for each regular workday lost and holiday pay for each holiday lost. This is to be paid at the rate of position assigned to the claimant at the time of removal of service. This amount is not to be reduced by earnings from alternative employment, obtained by the claimant while wrongfully removed from service. This should also include any general lump sum payment or retroactive general wage increase provided in any applicable agreement that becomes effective while claimant was out of service. Any overtime needs to be included for the lost overtime opportunities for any position the claimant could have held during the time he was removed from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had he not been removed from service. Any health, dental and vision care insurance premiums, deductibles and copays that he would not have paid had he not been unjustly removed from service.

It is hereby stated that Mr. Gustin be fully exonerated and all notations of the dismissal be removed from all Carrier records.' (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 27, 2017, *“to develop the facts and determine your responsibility, if any, in connection with your alleged violation of the Union Pacific Railroad Drug and Alcohol Policy as described: You allegedly tested positive for a prohibited substance (Alcohol level .095 BAC) in a UP Follow-Up test. The test was administered to you in accordance with Union Pacific Railroad (UPRR) Drug and Alcohol Policy on June 11, 2017 at 501 N 5th, Herington, KS while you were working as a Track Foreman. This is a possible violation of the following rule(s) and/or policy: 1.5: Drugs and Alcohol. If proven, this would be in violation of the UPRR Drug and Alcohol Policy and General Code of Operating Rules (Rule 1.5). Please be advised that if you are found to be in violation of this alleged charge, the assessment under the MAPS Policy may be permanent dismissal.”*

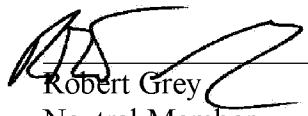
In a discipline letter dated July 12, 2017, the Carrier found that *“the following charges against you have been sustained: You allegedly tested positive for a prohibited substance (Alcohol level .095 BAC) in a UP Follow-Up test. The test was administered to you in accordance with Union Pacific Railroad (UPRR) Drug and Alcohol Policy on June 11, 2017 at 501 N 5th, Herington, KS while you were working as a Track Foreman. Assessment for violation of the UPRR Drug and Alcohol Policy and General Code of Operating Rules (Rule 1.5), according to the MAPS Policy, is permanent dismissal. Effective immediately, you are hereby dismissed from all service with the Union Pacific Railroad.”*

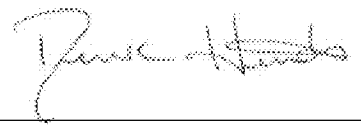
The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case,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

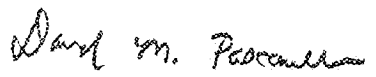
There is substantial evidence in the record to uphold the Carrier's discipline determination. The Organization's defenses are not persuasive. The discipline assessed by the Carrier was not arbitrary, capricious, or an abuse of discretion under the facts and circumstances of this record. Therefore, it will not be disturbed by this Board.

AWARD:

Claim denied.



Robert Grey
Neutral Member
Dated: October 23, 2019

Derek Hinds
Carrier Member

David M. Pascarella
Organization Member