

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: 113
Award No: 113

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

1. The Carrier's discipline (dismissal) of Mr. J. Jernigan, by letter dated October 26, 2017, for alleged violation of Rule 1.6: Conduct - Dishonest and Rule 1.13: Reporting and Complying with Instructions was unwarranted, arbitrary and in violation of the Agreement (System File UP709SN17D/1698591 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Jernigan shall be returned to work immediately, with all rights unimpaired and compensated for all time lost."

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 September 29, 2017, Investigation held October 9, 2017, "to develop the facts and determine your responsibility, if any, in connection with the below charge. On 07/27/2017, at the location of Opelousas, LA, at approximately 12:30 hours, while employed as a Safety Coach, you allegedly between the dates of July 27th – July 30th, you used a company vehicle for personal use, while on vacation. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct – Dishonest; 1.13: Reporting and Complying with Instructions. 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 October 26, 2017, the Carrier found that “*the evidence more than substantially supports the charges against you. The following charge has been sustained: On 07/27/2017, while employed as a Safety Coach, you Between the dates of July 27th – July 30th you used a company vehicle for personal use, while on vacation. This is a violation of the following rule(s) and/or policy: 1.6: Conduct – Dishonest; 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.

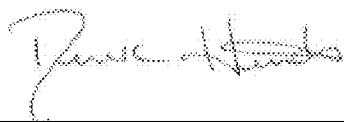
The Board finds that the Rule 22 due process violations outweigh Claimant’s charged conduct, under the facts and circumstances of this particular record.

AWARD:

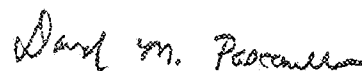
Claim sustained. The Carrier is ordered to make the Award favorable to the Claimant effective on or before 30 days following the date below.



Robert Grey
Neutral Member
Dated: October 23, 2019



Derek Hinds
Carrier Member



David M. Pascarella
Organization Member