

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: 115  
Award No: 115

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

1. The Carrier's discipline (dismissal) of Mr. K. Stewart, by letter dated December 19, 2017, for alleged violation of Rule 1.6: Conduct - Dishonest was unwarranted, arbitrary and in violation of the Agreement (System File UP501JF18/1700691 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant K. Stewart's personal record shall be cleared of the discipline and he be returned to service. The Carrier shall also pay and compensate Claimant for any and all lost time at his respective straight time rate of pay as well as any and all overtime performed by his gang at his respective overtime rate of pay. The Carrier shall also provide Claimant with all other benefits including holidays, Railroad Retirement credits, out of pocket hospitalization and medical losses and also expenses such as meals, lodging and mileage."

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 November 15, 2017, Investigation held December 7, 2017, *"to develop the facts and determine your responsibility, if any, in connection with the below charge. On 10/08/2017, at the location of Various locations on the Southern Region, Employee is an on Line Gang, at approximately 09:00 hours, while employed as a Trk Sys Frmn (R), you allegedly Between the dates of 6/8/17 and*

*10/8/17, while employed as a Trk Sys Frmn (R), you allegedly were claiming and receiving travel mileage you were not entitled while commuting between your assigned on line gang location and home while driving a company vehicle. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct – Dishonest. 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 December 19, 2017, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained. On 10/08/2017, while employed as a Trk Sys Frmn (R), you Between the dates of 6/8/17 and 10/8/17, while employed as a Trk Sys Frmn (R), you allegedly were claiming and receiving travel mileage you were not entitled while commuting between your assigned on line gang location and home while driving a company vehicle. This is a violation of the following rule(s) and/or policy: 1.6: Conduct – Dishonest. 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 record shows that the Carrier’s management witness was present at the Investigation, but did not offer testimony to rebut the Organization’s affirmative defense.

**AWARD:**

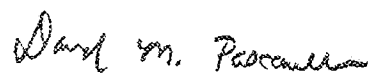
Claim sustained. The Carrier is ordered to make the Award favorable to the Claimant effective on or before 30 days following the date below.

A handwritten signature in black ink, appearing to read 'Robert Grey', written over a horizontal line.

Robert Grey  
Neutral Member  
Dated: October 23, 2019

A handwritten signature in black ink, appearing to read 'Derek Hinds', written over a horizontal line.

Derek Hinds  
Carrier Member

A handwritten signature in black ink, appearing to read 'David M. Pascarella', written over a horizontal line.

David M. Pascarella  
Organization Member