

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: 116
Award No: 116

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

1. The Carrier’s discipline (dismissal) of Mr. J. Martin, by letter dated February 15, 2018, for alleged violation of Rule 1.6: Conduct - Careless was unwarranted, arbitrary and in violation of the Agreement (System File UP404RRD18/1703800 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Martin’s discipline shall be set aside, he shall be returned to service with rights and benefits unimpaired and he shall be made whole for all financial and benefit losses suffered as a result of the discipline, including vacation, retirement and all straight time, overtime and holiday pay.”

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 December 29, 2017, Investigation held January 30, 2018, “*to develop the facts and determine your responsibility, if any, in connection with the below charge. On 12/21/2017, at the location of Lufkin, TX, near Milepost 122.9, Lufkin Subdivision, at approximately 09:45 hours, while employed as a Trk Foreman, you allegedly while operating a hy-rail pickup Unit 43703 failed to maintain speed under wet rail conditions resulting in a collision with a stopped hyrail excavator at MP 122.90. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct –*

Careless. 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 February 15, 2018, the Carrier found that “*the evidence more than substantially supports the charges against you. The following charge has been sustained: On 12/21/2017, while employed as a Trk Foreman, you while operating a hy-rail pickup Unit 43703 failed to maintain speed under wet rail conditions resulting in a collision with a stopped hyrail excavator at MP 122.90. This is a violation of the following rule(s) and/or policy: 1.6: Conduct – Careless. 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 under the facts and circumstances of this record. Therefore, it will not be disturbed by this Board.

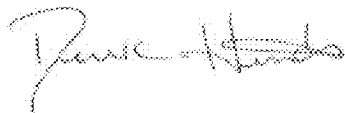
AWARD:

Claim denied.

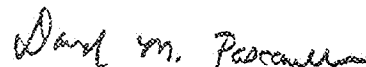


Robert Grey
Neutral Member

Dated: October 23, 2019



Derek Hinds
Carrier Member



David M. Pascarella
Organization Member