

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: 117
Award No: 117

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

1. The Carrier's discipline (dismissal) of Mr. P. Burton, by letter dated March 5, 2018, for alleged violation of Rule 1.7: Altercations, 1.6: Conduct - Quarrelsome, 1.6: Conduct - Discourteous and Item 10-I: Union Pacific Railroad Policies was unwarranted, arbitrary and in violation of the Agreement (System File UP507JF18/1703956 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant P. Burton'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 and overtime worked by his gang, holiday pay and out of pocket medical payments."

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 January 24, 2018, Investigation held February 19, 2018, *"to develop the facts and determine your responsibility, if any, in connection the below charge. On 01/23/2018, at the location of the 9167 job briefing area, Natchitoches, LA, at approximately 06:30 hours, while employed as a Trk Sys Trackman, you allegedly were quarrelsome and discourteous when you instigated an altercation with the gang Foreman, Mark Bennett. This is a possible violation of the following rule(s) and/or*

policy: 1.7: Altercations; Item 10-I: Union Pacific Railroad Policies - Policy to Address Violence & Abusive Behavior in the Work Place – Dismissal; 1.6: Conduct - Quarrelsome; 1.6: Conduct - Discourteous. 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 March 5, 2018, the Carrier found that “*the evidence more than substantially supports the charges against you. The following charge has been sustained: On 01/23/2018, while employed as a Trk Sys Trackman, you were quarrelsome and discourteous when you instigated an altercation with the gang Foreman, Mark Bennett. This is a violation of the following rule(s) and/or policy: 1.7: Altercations; Item 10-I: Union Pacific Railroad Policies - Policy to Address Violence & Abusive Behavior in the Work Place – Dismissal; 1.6: Conduct - Quarrelsome; 1.6: Conduct - Discourteous. 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.

Based upon the unique facts and circumstances of this record, the Board finds that Carrier met its burden of proof with respect to the charges. However, the discipline imposed was excessive and is converted to a time served suspension in accordance with Carrier’s discipline policy, with no loss of seniority, benefits restored, but no compensation.

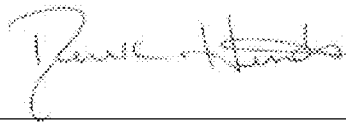
AWARD:

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.

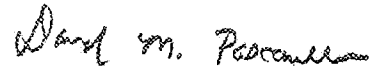


Robert Grey
Neutral Member

Dated: October 23, 2019



Derek Hinds
Carrier Member



David M. Pascarella
Organization Member