

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: 122  
Award No: 122

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

1. The Carrier's discipline (dismissal) of Mr. D. Marshall, by letter dated December 20, 2017, for alleged violation of Rule 1.6: Conduct - Careless, Rule 1.6: Conduct - Dishonest, Rule 1.6: Conduct - Negligent, Rule 42.3: Main Track Authority, Rule 136.3.1: Job Briefing for Roadway Work Groups, Rule 136.4: On-Track Safety Procedures and Rule 136.4.1: Exclusive Track Occupancy was unwarranted, arbitrary and in violation of the Agreement (System File UP902PA18/1700690 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Marshall'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 October 30, 2017, Investigation held December 6, 2017, *"to develop the facts and determine your responsibility, if any, in connection with the below charge. Knowledge of this incident was learned on 10/17/2017. On 10/16/2017, at the location of Houston Subdivision, Tower 26, at approximately 10:25 hours, while employed as a Welder, you allegedly were Careless and*

*Negligent when you allegedly occupied, traveled and performed work on track you did not have authority to be on. Additionally, you were allegedly dishonest in reporting making a weld that was made back in January of 2017. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct - Careless; 1.6: Conduct - Dishonest; 1.6: Conduct - Negligent; 42.3: Main Track Authorization; 136.3.1: Job Briefing for Roadway Work Groups; 136.4.1: Exclusive Track Occupancy; 136.4: On-Track Safety Procedures. 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 20, 2017, the Carrier found that *“the evidence more than substantially supports the charges against you. The following charge has been sustained: On 10/16/2017, while employed as a Welder, you were Careless and Negligent when you allegedly occupied, traveled, and performed work on track you did not have authority to be on. Additionally, you were allegedly dishonest in reporting making a weld that was made back in January of 2017. This is a violation of the following rule(s) and/or policy: 1.6: Conduct - Careless; 1.6: Conduct - Dishonest; 1.6: Conduct - Negligent; 42.3: Main Track Authorization; 136.3.1: Job Briefing for Roadway Work Groups; 136.4.1: Exclusive Track Occupancy; 136.4: On-Track Safety Procedures. 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.”*

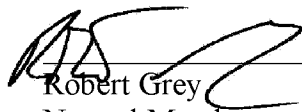
The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, 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.

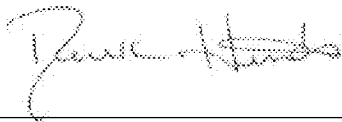
AWARD:

Claim denied.

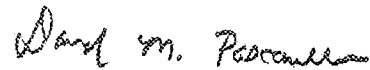


Robert Grey  
Neutral Member

Dated: October 23, 2019



Derek Hinds  
Carrier Member



David M. Pascarella  
Organization Member