

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. 123
Award No. 123

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier’s discipline (dismissal) of Mr. R. Wyatt, Jr., by letter dated April 13, 2018, for alleged violation of Rule 1.6: Conduct - Quarrelsome, Rule 1.7: Altercations and Item 10-I: Union Pacific Railroad Policies - Policy to Address Violence & Abusive Behavior in the Work Place was unwarranted, arbitrary and in violation of the Agreement (System File UP511JF18/1705968 MPR).*
- 2. As a consequence of the violation referred to in Part 1 above, Claimant R. Wyatt, Jr.’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 February 16, 2018, Investigation held February 27, 2018, *“to develop the facts and determine your responsibility, if any, in connection with the below charge. On 02/09/2018, at the location of Incident occurred while in transit on a Union Pacific Company Bus while traveling from*

worksite location to roll call location in Edinburg, TX, at approximately 19:10 hours, while employed as a Welder, you allegedly engaged in a Verbal Altercation with another Union Pacific Employee while being transported from the work site location to the roll call location in Edinburg, TX This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct - Quarrelsome, 1.7: Altercations, Item 10-I: Union Pacific Railroad Policies - Policy to Address Violence & Abusive Behavior in the Work Place - Dismissal. 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.”

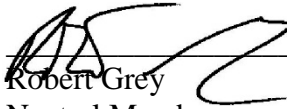
In a discipline letter dated April 16, 2018, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: On 02/09/2018, while employed as a Welder, you engaged in a Verbal Altercation with another Union Pacific Employee while being transported from the work site location to the roll call location in Edinburg, TX This is a violation of the following rule(s) and/or policy: 1.6: Conduct - Quarrelsome, 1.7: Altercations, Item 10-I: Union Pacific Railroad Policies - Policy to Address Violence & Abusive Behavior in the Work Place - Dismissal. 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.

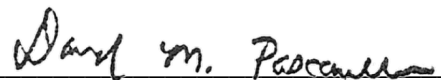
There is substantial evidence in the record to uphold the Carrier's determination of culpability. However, the mitigating factors proven by the Organization persuade the Board that termination is excessive under the facts and circumstances of this record. Claimant is reinstated to service with full seniority and benefits unimpaired, but without back pay.

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: May 12, 2020


Christopher M. Bogenreif
Carrier Member


David M. Pascarella
Organization Member