

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. 125
Award No. 125

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier’s discipline (dismissal) of Messrs. R. Tarango, S. Lozano and B. Hinojos, Jr., by letters dated May 25, 2018, for alleged violation of Rule 1.6: Conduct - Careless was unwarranted, arbitrary and in violation of the Agreement (System File UP518JF18/1707342 MPR).*
- 2. As a consequence of the violation referred to in Part 1 above, Claimants R. Tarango, S. Lozano and B. Hinojos, Jr.’s discipline shall be set aside, they shall be returned to service with rights and benefits unimpaired and they 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, 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.

Claimants R. Tarango and S. Lozano were disciplined pursuant to separate Notices of Investigation dated May 1, 2018, Investigation held May 8, 2018, *“to develop the facts and determine your responsibility, if any, in connection with the below charge. On 03/13/2018, at the location of Monahans, TX, near Milepost 609.63, Toyah Subdivision, at approximately 16:00 hours, while employed as a Trk Foreman, you allegedly were careless of safety and/or negligent when you and/or your work group with your knowledge made and left torch cut bolt holes in the*

rail at MP 609.63 at Monahans, TX. In addition to and since this discovery several locations within your assigned work area have been identified as having previous torch cut rail and bolt holes as a means of repair. 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. Property damage has been recorded in this incident that is greater than the FRA threshold and affects the MAPS Rule Category. Based upon your current status, if you are found to be in violation of this alleged charge, Dismissal may result.”

Claimant B. Hinojos was disciplined pursuant to a Notice of Investigation dated May 1, 2018, Investigation held May 8, 2018, *“to develop the facts and determine your responsibility, if any, in connection with the below charge. On 03/13/2018, at the location of Monahans, TX, near Milepost 609.63, Toyah Subdivision, at approximately 16:00 hours, while employed as a Trackman, you allegedly were careless of safety and/or negligent when you and/or your work group with your knowledge made and left torch cut bolt holes in the rail at MP 609.63 at Monahans, TX. In addition to and since this discovery several locations within your assigned work area have been identified as having previous torch cut rail and bolt holes as a means of repair. 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. Property damage has been recorded in this incident that is greater than the FRA threshold and affects the MAPS Rule Category. Based upon your current status, if you are found to be in violation of this alleged charge, Dismissal may result.”*

In separate discipline letters issued to Claimants R. Tarango and S. Lozano dated May 25, 2018, the Carrier found that *“the evidence more than substantially supports the charges against you. The following charge has been sustained: On 03/13/2018, while employed as a Trk Foreman, you were careless of safety and/or negligent when you and/or your work group with your knowledge made and left torch cut bolt holes in the rail at MP 609.63 at Monahans, TX. In addition to and since this discovery several locations within your assigned work area have been identified as having previous torch cut rail and bolt holes as a means of repair. 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.”

In a discipline letter to Claimant B. Hinojos dated May 25, 2018, the Carrier found that *“the evidence more than substantially supports the charges against you. The following charge has been sustained: On 03/13/2018, while employed as a Trackman, you were careless of safety and/or negligent when you and/or your work group with your knowledge made and left torch cut bolt holes in the rail at MP 609.63 at Monohans, TX. In addition to and since this discovery several locations within your assigned work area have been identified as having previous torch cut rail and bolt holes as a means of repair. 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 determination that Claimants clearly had culpability in this matter and violated the rules by using a torch to cut bolt holes in yard tracks to complete repairs. However, the evidence presented in this case also proves that using a torch to make repairs to yard tracks, although prohibited, had become a common practice, and a Carrier manager had knowledge that repairs had been made in that manner. There is testimony from a Carrier manager that he saw Claimants performing that same act and did not correct the practice, and in fact allowed it. Coupled with the fact that other gangs had made repairs in the same area, the track in question contained numerous defects, no one could testify to the last time the track had been inspected, and the derailment happened nearly 36 days after the Claimants made repairs at this location, the Board finds that the mitigating factors presented by

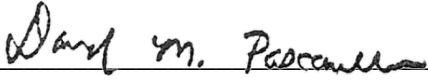
the Organization prove that termination is excessive for each Claimant under the facts and circumstances of this record. Claimants are reinstated to service with full seniority and benefits unimpaired, but without any back pay for time served out of service.

AWARD:

Claim sustained in accordance with the Findings. The Carrier is ordered to make the Award favorable to the Claimants 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