

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: 141  
Award No: 141

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

1. The Carrier's discipline (dismissal) of Mr. N. Schuermann, by letter dated May 14, 2019, for alleged violation of EEO Policy – Dismissal, 1.6: Conduct – Immoral, Item 10-I: Union Pacific Railroad Policies – Equal Employment Opportunity/Affirmative Action and Related Policy Directives – Critical and 1.6: Conduct – Discourteous was severe, harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File UP408DRR19/1722951 MPR).
2. As a consequence of the violation referred to in Part 1 above:

'The Organization request that in such time in which Mr. Nathan Scheuermann be re-instated to service that he would not be subjected to any additional probation under the Union Pacific MAPS Policy Specifically Rule 3.7 Arbitration decision in which the carrier can revert employee status to a second triggering/training event with a 36-month retention period.

As a remedy for this violation, the suspension should be set aside, and the claimant shall be made whole for all financial and benefit losses because of the violation. Any benefit lost including vacation and health insurance benefits shall be restored. Restitution for financial losses because of the violation shall include all straight time pay, overtime pay, and loss of holiday pay for time Mr. Nathan Scheuermann EID (0416617) was held out of service and that Mr. Scheuermann be returned to service.' (Employees' Exhibit 'A-2')."

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 April 17, 2019, Investigation held April 30, 2019, "... to develop the facts and place your responsibility, if any, in connection with the below charge.

On 04/10/2019, at the location of Austin Subdivision, at approximately 16:45 hours, while employed as a Trk Sys Frmn (R), you allegedly made inappropriate and offensive comments over the company radio in violation of UPRR Rules and/or Policies. This is a possible violation of the following rule(s) and/or policy:

EEO Policy - Dismissal  
1.6: Conduct - Immoral  
Item 10-I: Union Pacific Railroad Policies - Equal Employment Opportunity/Affirmative Action and Related Policy Directives - Critical  
1.6: Conduct - Discourteous.

In a discipline letter dated May 14, 2019, the Carrier found that "... after carefully considering the evidence adduced at the hearing, I find that the evidence more than substantially supports the charges against you. The following charge has been sustained

On 04/10/2019, while employed as a Trk Sys Frmn (R), you made inappropriate and offensive comments over the company radio in violation of UPRR Rules and/or Policies. This is a violation of the following rule(s) and/or policy:

EEO Policy - Dismissal  
1.6: Conduct - Immoral  
Item 10-I: Union Pacific Railroad Policies - Equal Employment Opportunity/Affirmative Action and Related Policy Directives - Critical  
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.


The Board finds the Organization's procedural objections unpersuasive under the facts and circumstances of this record.

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

  
Christopher Bogenreif  
Carrier Member

  
John Schlismann  
Organization Member

January 19, 2022

Dated