

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: 142
Award No: 142

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

1. The Carrier's discipline (dismissal) of Mr. J. Zamora, by letter dated September 9, 2019, for alleged violation of Rules 1.6: Conduct – Dishonest, 1.13: Reporting and Complying with Instructions, SSI Item 10-1: Union Pacific Railroad Policies and Rule 1.6 Conduct – which reads: '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' was severe, harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File UP520JF19/1729187 MPR).

2. As a consequence of the violation referred to in Part 1 above, we request:

‘... the Discipline of Dismissal to be removed, and removed from Claimant's Personnel Record. Also, to be paid and compensated for any and all lost time at the Claimant's respective straight time rate of pay, and any and all overtime to be paid at his respective overtime rate of pay that the gang he was assigned to was afforded, and the employee performing the Claimant's work had he not been unjustly, and excessively disciplined. Also, to include any and all holidays, and all lost time to be credited to Railroad Retirement, hospitalization, to include physician office visits etc., dental, prescriptions, and vision beginning on August 3, 2019, through and including on a continuous basis until this matter is settled. Also, to include any and all expenses the Claimant may have acquired, to include meals, lodging, and mileage at the negotiated rate of \$ 58.5 cents a mile from Mr. Zamora's place of residence, 711 Nancy Lane, Pleasanton, Texas, 78064 to the San Antonio Hampton Brooks City Base, 8202 City Base Landing, San Antonio, Texas, and returning to Mr. Zamora's place of residence for his attendance at the Formal Investigation on August 21, 2019, account the Carrier unjustly, and excessively charged and disciplined the Claimant without sufficient supportive evidence, not affording him a "Fair and Impartial Investigation", forcing him in a worse position. Causing him a loss of work opportunity, loss of wages, and causing him financial hardship.

* * *

The Organization also requests that within such time in which the Claimant is reinstated back to active service he would not be subjected to any additional probation under the Union Pacific MAPS Policy specifically "Rule 3.7 Arbitration Decision" in which case the Carrier can revert employees (sic) status to a second triggering/training event with a thirty six (36) month retention period.' (Employees' Exhibit 'A-3')."

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 August 15, 2019, Investigation held August 21, 2019, "... to develop the facts and place your responsibility, if any, in connection with the below charge.

On 08/02/2019 the Carrier gained knowledge that during the month of July 2019, you allegedly falsified your worksite reporting location which allowed you to gain per diem for which you were not entitled to. This is a possible violation of the following rule(s) and/or policy:

Rule 1.6: Conduct - Dishonest
Rule 1.13: Reporting and Complying with Instructions
SSI Item 10-I: Union Pacific Railroad Policies
Rule 1.6: Conduct -- which reads:

"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."

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 September 9, 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 08/02/2019, while employed as a Welder, the Carrier gained knowledge that during the month of July 2019, you falsified your worksite

reporting location which allowed you to gain per diem for which you were not entitled to. This is a violation of the following rule(s) and/or policy:

1.6: Conduct - Dishonest
1.13: Reporting and Complying with Instructions
SSI Item 10-I: Union Pacific Railroad Policies
Rule 1.6: Conduct -- which reads:

“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.”

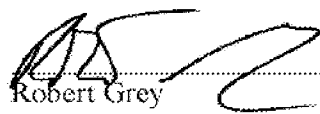
Additionally, Rule 1.6: Conduct stipulates that any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated.

Based on your current record, you are hereby dismissed from all service with the Union Pacific Railroad.

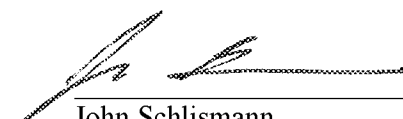
The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties' respective positions, whether or not specifically addressed herein. Due to the specific facts of record within this claim, the Board has determined the Organization's arguments are persuasive, therefore, the Board sustains the claim. Claimant is to be reinstated to service at Claimant's former position, with full seniority unimpaired, and afforded the remedy provided in Rule 22(f) of the parties' Agreement. Claimant's record shall not contain any MAPS status pertaining to this matter.

AWARD

Claim sustained. Pursuant to Rule 22(f) of the parties' Agreement Claimant is reinstated to service at Claimant's former position, with full seniority unimpaired, and afforded the remedy provided therein. Claimant's record shall not contain any MAPS status pertaining to this matter. The Carrier is directed to comply with this Award on or before 30 days following the date by which any two members of the Board have affixed their signatures hereto.



Robert Grey
Neutral Member

Christopher Bogenreif
Carrier Member

John Schlismann
Organization Member

January 21, 2022

Dated