

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. 158
Award No. 158

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

1. The Carrier's discipline (dismissal) of Mr. R. Gonzalez, by letter dated October 16, 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. ****" (Employees' Exhibit 'A-1'), was severe, harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File UP953PA19/1730336 MPR).
2. As a consequence of the violation referred to in Part 1 above, we request:

‘... the discipline be removed from Truck Operator Raul Gonzalez's personal record, and that he be compensated for any lost time such as straight time, overtime, holidays, travel expenses and mileage for attending this hearing at the rate of .58 cents per mile from his residence to the address in which this investigation took place and any other benefits that he might have lost if any due to discipline issued in connection with these charges that would have normally been covered by the Carrier.

The Organization also requests that within such time in which the Claimant is re instated (sic) back to active service that he would not be subject to any additional probation under 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.' (Emphasis in original) (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 16, 2019, Investigation held September 27, 2019, "... to develop the facts and determine your responsibility, if any, in connection with the below charge. On 08/13/2019 the Carrier gained knowledge that during the month of July 2019 you allegedly were dishonest when you falsely claimed pay for hours you did not perform compensated service for the Carrier. This allowed you to receive pay that you were otherwise not entitled to. This is a possible 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.’

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 October 16, 2019, the Carrier found that "... the evidence more than substantially supports the charges against you. The following charge has been sustained:

On 08/13/2019, while employed as a Truck Operator 2 Tons Plus, the Carrier gained knowledge that during the month of July 2019, you were dishonest; when you falsely claimed pay for hours you did not perform compensated service for the Carrier. This allowed you to receive pay that you were otherwise not entitled to. This is a possible 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:

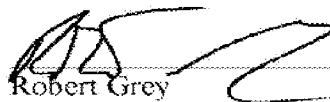
‘Any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated.’

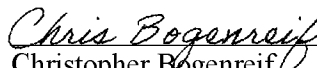
Based on your current record, you are hereby dismissed from all service with the Union Pacific Railroad....”

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

May 18, 2022

Dated