

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. 159
Award No. 159

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

1. The Carrier's discipline (dismissal) of Mr. N. Session, by letter dated November 13, 2019, for alleged violation of Rules 1.6: Conduct – Dishonest and Rule 1.6 Conduct and '... stipulates 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.' (Employees' Exhibit 'A-1') was excessive, arbitrary, disparate, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File UP417RR19/1731240 MPR).
2. As a consequence of the violation referred to in Part 1 above:

**** We would specifically request these charges be removed from Mr. Nathaniel Session Personal Record. Also, to be paid and compensated for any and all time at the Claimant's respective straight time rate of pay, 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 October 15, 2019 (sic) 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. Session place of residence at 415 Broadmore Street, Athens, Texas 75751 to Holiday Inn Conference 5701 South Broadway, Tyler Texas and return to Mr. Session place of residence for his attendance at this Formal Investigation on October 30, 2019 (sic) account of the Carrier unjustly and excessively charged and disciplined the Claimant without sufficient supportive evidence and

not affording him a Fair and Impartial Investigation, forcing (sic) him in a worse position, causing (sic) him a loss of work opportunity loss of wages and causing him financial hardship.

* * *

The Organization request that in such time in which Mr. Nathaniel Session 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. Nathaniel Session EID (0478308) was held out of service and that Mr. Session be returned to service.' (Employee's 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 October 23, 2019, Investigation held October 30, 2019, "... to develop the facts and determine your responsibility, if any, in connection with the below charge. On 10/12/2019, at the location of Athens, Tx, near Milepost 583.89, Corsicana Subdivision, at approximately 14:00 hours, while employed as a Welder, you allegedly Acted dishonestly while working overtime on 10/12/19 by reporting more overtime than you were entitled to and by taking part in the reporting of a field weld that was claimed as a production unit but not actually completed. This is a possible violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest".

In a discipline letter dated November 13, 2019, the Carrier found that "... the evidence more than substantially supports the charges against you. The following charge has been sustained:

On 10/12/2019, while employed as a Welder, you acted dishonestly while working overtime on 10/12/19 by reporting more overtime than you were entitled to and by taking part in reporting of field weld that was claimed as a production unit but not actually completed. This is a violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest

Additionally, **Rule 1.6: Conduct** stipulates 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."


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.

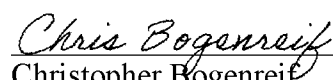
There is substantial evidence in the record to partially uphold the Carrier's determination of culpability. The Board has thoroughly searched the record and finds that in light of the facts and circumstances of this particular record, and the mitigating factors proven by the Organization, dismissal is excessive. The Board concludes that the dismissal should be modified to a long-term suspension.


AWARD

Claim sustained in accordance with the Findings. Claimant is reinstated to service with full seniority unimpaired, but without back pay, at MAPS Training 1 status with a 36-month retention

period. 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