

PUBLIC LAW BOARD NO. 7633

Case No.: 16/Award No.: 16

System File No.: UP: 1575619/BMWED: UP318WF12

Claimant: J. Q. Ingram

UNION PACIFIC RAILWAY COMPANY)

-and-

BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION)

Organization's Statement of Claim:

1. The Level 5 UPGRADE discipline assessment (dismissal from service) to Mr. J. Ingram for an alleged violation of Union Pacific Rule 1.6 Conduct, dishonesty, was not justified.
2. As a consequence of the violation referred to in Part 1 above, the claimant shall be reinstated with all rights due to him under the Collective Bargaining agreement.

Facts:

By letter dated October 6, 2012 the Claimant was directed to attend an investigation and hearing on October 25, 2012 “to develop the facts and place responsibility, if any, that while employed as Track Foreman on Gang 2582, you allegedly failed to be honest in your payroll reporting on the following dates: July 28, 2012, September 9, 2012, September 11, 2012, September 13, 2012, September 14, 2012, September 15, 2012, September 17, 2012, and September 25, 2012.”

The letter further noted that the failure, if substantiated would constitute a violation of Rule 1.16 Conduct (an obvious typographical error as the appropriate reference is to Rule 1.6) that could result in Level 5 discipline (permanent dismissal) under the Carrier's UPGRADE discipline policy. Also, the letter informed the Claimant that he would be withheld from service pending the results of the investigation once his leave had expired.

Carrier Position:

Violation of Rule 1.6 has been shown with substantial evidence of falsification of payroll information and the acceptance of pay for time not worked. Witness statements and testimony of the Claimant establish violations, for which the Claimant showed no remorse. His excuses were unconvincing. He stole time and thus violated trust and created unsafe conditions. Dismissal for dishonesty is supported by numerous arbitration awards and should not be overturned by this Board. No due process violations occurred. MTM Wirth's knowledge of the Claimant's actions dated from September 13, 2012, with the October 4, 2012 notice of the investigation within the required timeframe. The Claimant's leave required that the hearing be scheduled after his return, thus the intent and purpose of the CBA and Rule 22 was complied with.

Organization Position:

The Carrier has not met the burden of proof because the Claimant's testimony showed that he was at work on the dates in question and what he was doing on those dates, with the MTM agreeing as to why the Claimant was paid. July 29, 2002 was more than 30 days before the Carrier's knowledge of the incident and, therefore, should not be considered. Discrepancies related to the dates in question could have been cleared up if the Carrier had not been eager to charge the Claimant. Dismissal was excessive, serving only to punish and not to correct.

Findings:

The Claimant's alleged dishonest reporting of time on July 29, 2012 has not been considered because this occurred more than 30 days before the Carrier's knowledge of the incident. Otherwise, there are no procedural or due process defects that would cause the Board to set aside the dismissal.

Regarding September 9, 2012, Welders Larocca and Jones confirmed written statements that the Claimant left about 2:00 pm. The Claimant, having put in for 10 hours of overtime said the he was called out by Andy Grainger, but he did not call Mr. Grainger to confirm this. He also said that he stayed long enough so that he missed a birthday party he had planned on attending off the property, but provided no additional detail about his work that day.

Regarding September 10, 2012, Track Foreman Garcia confirmed his statement that the Claimant was dropped at the depot early. The Claimant, who charged for eight hour straight time and three hours overtime testified that he reported at 5:30 am and that he took Saturday off rather than Monday. Again, he did not address the allegation that he left early and did not detail his work that day other than to say that he was at the depot closing out defects.

Welders Larocca and Jones stated that on September 11, 2012 they did not see the Claimant after 3:00 pm. Foreman Garcia indicated that at some point the Claimant took off and he was not sure where, with Foreman Odom indicating that at some point the Claimant left to bring others out but thereafter was not involved with the Gang. The

Claimant, who put in for eight hours of straight time and five hours of overtime provided no specifics about his use of time that day.

On September 13, 2012, Foreman Odom recalled that the Claimant left an hour before he did, which the Claimant essentially confirmed. He has noted eight hours straight time and one hour of overtime.

Foreman Odom confirmed his statement that on September 14, the Claimant left early for a doctor's appointment. The Claimant, who had put in for eight hours of straight time for the day, testified that he had to take his wife to the hospital due to a severe skull infection and that he called MTM Wirth and supposedly took a half-day of vacation, although this is not indicated on the pay records.

MTM Wirth testified that September 15, 2012 was a day on which nobody worked. The Claimant charged three hours of overtime, for which he had no explanation.

Regarding September 17, 2012, Foreman Garcia said that he dropped the Claimant at the depot in the Gang truck about noon and did not know what the Claimant did thereafter. The Claimant, who entered eight hours of straight time and 2'45 hours of overtime testified that somehow vacation time showed up on his records and that he told MTM Wirth that he would go back and repay vacation days. The record does not show vacation time and the Claimant provided no specifics about his work that day.

Regarding September 25, 2012, Foreman Garcia said that he dropped the Claimant at the depot for a doctor's appointment. Welder Jones indicated that he worked late and that other Gang members, but not the Claimant, came to help. Welder Larocca did not know where the Claimant was that day. The Claimant, who charged eight hours straight time and an hour of overtime, testified that he left at 1:00 pm to register at the hospital and that he charged vacation for the next day although he actually worked. The records show vacation time charged for September 26, 2012 but there is no testimony from the Claimant about work supposedly performed that day.

The Board finds an unmistakable pattern wherein the Claimant charged for time that was not worked. Even though there were times where Company witnesses could not say with assurance that the Claimant was not at work somewhere on the property, his explanations are not always consistent with the records, do not represent an accurate accounting of his time and give the strong impression of being contrived. There is substantial evidence that he was dishonest in his payroll reporting and thus violated Rule 1.6.

The Claimant had been instructed to be accurate in his reporting of time, but disregarded these instructions. The Carrier, sensing the possibility of a form of fraud, had every right to approve the time sheets and investigate rather than attempt to simply resolve supposed discrepancies. No employer should be required to live with a dishonest employee.

The Carrier's UPGRADE discipline policy has been upheld in prior awards and there is firm arbitral support in both on-property and off-property awards for dismissal as the appropriate discipline for proven dishonesty. In view of the breach of trust flowing from the Claimant's dishonest acts, corrective discipline is not an appropriate consideration.

Award:

Claim denied.

Order:

The Board, after consideration of the dispute identified above, orders that no award favorable to the Claimant be entered.



Andrew Mulford, Organization Member



Katherine N. Novak, Carrier Member



I. B. Helburn, Neutral Referee

Austin, Texas
January 15, 2015