

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. 160  
Award No. 160

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

1. The Carrier's discipline (dismissal) of Mr. C. Holloway, by letter dated November 14, 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 UP958PA19/1731371 MPR).

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

'We hereby request that the charges and the discipline be removed from Track Foreman Christopher Holloway'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-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 Trk Foreman, 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 14, 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 Track Foreman, 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.”

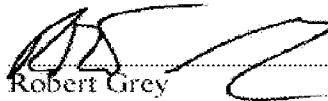
The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now

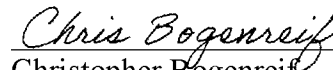
before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties' respective positions, whether or not specifically addressed herein.


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