

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. 164
Award No. 164

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

1. The Carrier's discipline (dismissal) of Mr. C. McFarlane, by letter dated November 26, 2019, for alleged violation of Rules 1.6: Conduct – Careless; 74.3: Cell Phone and Electronic Device Use; and 74.5: Seat Belts was excessive, arbitrary, disparate and imposed in violation of the Agreement (System File UP962PA19/1732760 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 Codie McFarlane’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.’ (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 September 16, 2019, Investigation held November 19, 2019, "... to develop the facts and determine your responsibility, if any, in connection with the below charge. On 09/10/2019, at the location of Bridgeport, TX, near Milepost 569.0, of the Duncan Subdivision, at approximately 20:20 hours, while employed as a Trk Foreman, you allegedly

was observed with a hand held cell phone while operating vehicle 48138 and not being properly secured by a seatbelt. This information was provided by DriveCam video on 09/11/2019. This is a possible violation of the following rule(s) and/or policy:

- 1.6: Conduct - Careless
- 74.3: Cell Phone and Electronic Device Use
- 74.5: Seat Belts

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 November 26, 2019, the Carrier found that “... the evidence more than substantially supports the charges against you. The following charge has been sustained:

On 09/10/2019, while employed as a Trk Foreman, you was observed with a hand held cell phone while operating vehicle 48138 and not being properly secured by a seatbelt. This information was provided by DriveCam video on 09/11/2019. This is a violation of the following rule(s) and/or policy:

- 1.6: Conduct – Careless
- 74.3: Cell Phone and Electronic Device Use
- 74.5: Seat Belts

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....”

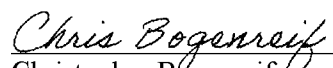
The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties’ respective positions, whether or not specifically addressed herein.

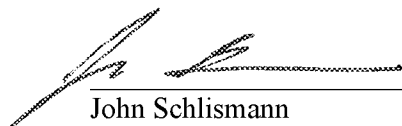
There is substantial evidence in the record to uphold the Carrier’s discipline determination. The Organization’s defenses are not persuasive. The discipline assessed by the Carrier was not arbitrary, capricious, or an abuse of discretion under the facts and circumstances of this record. Therefore, it will not be disturbed.

AWARD

Claim denied.


Robert Grey
Neutral Member


Christopher Bogenreif
Carrier Member


John Schlismann
Organization Member

May 18, 2022

Dated