

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance  
of Way Employees Division - IBT Rail Conference

and

Union Pacific Railroad Company  
(Former Missouri Pacific Railroad Company)

Case No. 167  
Award No. 167

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

1. The Carrier's discipline (dismissal) of Mr. L. Geshiwlml, by letter dated January 22, 2020, for alleged violation of Rules 1.6 Conduct – Dishonest; SSI Item 10-1 Union Pacific Railroad Policies (Statement of Policy on Ethics and Business Conduct; EEO Policy: The How Matters Policy; Rules 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." (Employees' Exhibit 'A-1') was exceedingly harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File 20 10 01/1734119 MPR).
2. As a consequence of the violation referred to in Part 1 above:  
  
'... the Organization request that Claimant be exonerated of all charges and be reimbursed for all wage loss sustained as a result of the Carrier's action.' (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 January 10, 2020, Investigation held January 16, 2020, "... to develop the facts and determine your responsibility, if any, in connection with the below charge:

While employed in the non-agreement covered position of Manager of Track Maintenance, you were allegedly dishonest when you falsified Company records in an attempt to conceal a 12/06/2019 "Drive Cam" violation which you had committed. This is a possible violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest  
SSI Item 10-I: Union Pacific Railroad Policies (Statement of Policy on Ethics and Business Conduct)  
The How Matters Policy  
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."

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 January 22, 2020, the Carrier found that "... the evidence more than substantially supports the charges against you. The following charge has been sustained:

While employed in the non-agreement covered position of Manager of Track Maintenance, you were allegedly dishonest when you falsified Company records in an attempt to conceal a 12/06/2019 "Drive Cam" violation which you had committed. This is a possible violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest  
SSI Item 10-I: Union Pacific Railroad Policies (Statement of Policy on Ethics and Business Conduct)  
The How Matters Policy  
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.


The Board finds substantial evidence of negligence on the part of Claimant, but not substantial evidence of dishonesty. In light of the facts and circumstances of this record, the Board concludes that Claimant be allowed to return to service, without back pay, at MAPS Training 1 status with a 36-month retention period, by bidding for an open position.

AWARD

Claim sustained in accordance with the Findings. The Carrier is ordered to make the Award favorable to the Claimant effective on or before 30 days following the date below.

  
Robert Grey  
Neutral Member

Chris Bogenreif  
Christopher Bogenreif  
Carrier Member

  
John Schlismann  
Organization Member

October 27, 2022  
Dated