

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. 169
Award No. 169

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

1. The Carrier's discipline (dismissal) of Mr. J. Nelson, by letter dated January 20, 2020, for alleged Third Offense violation of the Carrier's Attendance Policy was excessive, arbitrary, disparate, imposed without due process and in violation of the Agreement (System File UP967PA20/1734969 MPR).
2. As a consequence of the violation referred to in Part 1 above, the Organization requests that '... the charges and the discipline be removed from Welder Joseph Nelson (sic) 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 .575 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 November 26, 2019, Investigation held January 9, 2020, "... to develop the facts and determine your responsibility, if any, in connection with your alleged violation of the Union Pacific Railroad Attendance Policy. While employed as a/an Welder Helper with Union Pacific Railroad, you allegedly failed to protect your employment on a full time basis through frequent or pattern layoffs and/or failure to report for service between 11/22/2019

and 11/22/2019. If such charges are proven, you may be assessed a **THIRD OFFENSE ATTENDANCE** violation of the Union Pacific Railroad Attendance Policy.”

In a discipline letter dated January 20, 2020, the Carrier found that “... the following charges against you have been sustained:

While employed as a/an Welder Helper with Union Pacific Railroad, you failed to protect your employment on a full time basis through frequent or pattern layoffs and/or failure to report for service between 11/22/2019 and 11/22/2019.

This conduct is a violation of the Union Pacific Railroad’s Attendance Policy and constitutes a **Third Offense** violation of the Union Pacific Railroad Attendance policy.


Therefore, effective immediately, 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

Chris Bogenreif

Christopher Bogenreif
Carrier Member

A handwritten signature in black ink, consisting of a stylized 'J' followed by a horizontal line and a small flourish.

John Schlismann
Organization Member

October 27, 2022
Dated