

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance  
of Way Employes Division - IBT Rail Conference

and

Union Pacific Railroad Company  
(Former Missouri Pacific Railroad Company)

Case No. 170  
Award No. 170

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

1. The Carrier's discipline (dismissal) of Mr. L. Webber, by letter dated January 16, 2020, for alleged violation of Rule 1.6: Conduct – Dishonest and, 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.' (Emphasis in original) (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 UP702SN20D/1735494 MPR).
2. As a consequence of the violation referred to in Part 1 above, the Claimant shall be allowed '... all vacation and seniority rights unimpaired, that the charge and discipline A Dismissal Level 5 violation, issued per letter of January 16, 2020 from Mark Wheeland AVP Track Maintenance, resultant investigation held December 30, 2019, be removed from his personal record, that he be made whole for all time lost due to discipline issued in connection with these charges, and that he be reimbursed for any additional expenses, including those requested in the December 30, 2019 hearing, incurred that would have normally been covered by Carrier benefits, account the Carrier violated Rule 22, of our Agreement.' In addition, '... we request the charged be returned to work immediately, with all rights unimpaired and compensated for all time lost.' (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 December 3, 2019, Investigation held December 30, 2019 "... to develop the facts and determine your responsibility, if any, in connection with the below charge.

On 11/26/2019, at the location of 1112 W Arlington, Sallisaw, OK, 74955, at approximately 17:32 hours, while employed as a M/O (Br) Bal Reg, you allegedly performed misconduct by charging overtime for personal business being done during and after normal work hours. This is a possible violation of the following rule(s) and/or policy:

1.6 Conduct – Dishonest

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 16, 2020, the Carrier found that "... the evidence more than substantially supports the charges against you. The following charge has been sustained:

On 11/26/2019, while employed as a M/O (Br) Bal Reg, you performed misconduct by charging overtime for personal business being done during and after normal work hours. This is a violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest

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.

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 the


dismissal should be modified to a long-term suspension. Claimant is reinstated to service with full seniority unimpaired, but without back pay, at MAPS Training 1 status with a 36-month retention period.

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