

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. 173
Award No. 173

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

1. The Carrier's discipline (dismissal) of Mr. S. Beeler, by letter dated March 5, 2020, for alleged violation of Rules 1.6 Conduct – Dishonest; 1.13: Reporting and Complying with Instructions; SSI Item 10-I: Union Pacific Railroad Policies; 'The How Matters' Policy; and 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.' (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 UP706SN20D/1737496 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Beeler shall:

'... be returned to work on his position of Forman (sic), and the claimant shall be made whole for all financial losses as a result of the violation, including compensation for the straight time for each regular workday lost and holiday pay for each holiday lost. This is to be paid at the rate of position assigned to the claimant at the time of removal of service. This amount is not to be reduced by earnings from alternate employment, obtained by the claimant while wrongfully removed from service. This should also include any general lump sum payment or retroactive general wage increase provided in any applicable agreement that becomes effective while claimant was out of service. Any overtime needs to be included for the lost overtime opportunities for any position the claimant could have held during the time he was removed from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had he not been removed from service. Any health, dental and vision care insurance premiums, deductibles and copays that he would not have paid had he not been unjustly removed from service.' (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 February 10, 2020, Investigation held February 19, 2020, "... to develop the facts and determine your responsibility, if any, in connection with the below charge.

During your scheduled shift spanning February 2 to February 3, 2020, while working as a Truck Operator 2 Tons Plus, you allegedly were dishonest when you informed your manager you were laying off FMLA yet claimed pay that you were not entitled to, for hours that you never worked. Additionally, during your scheduled shift spanning February 5 to February 6, 2020, you allegedly left work without proper authority and were dishonest when you claimed pay that you were not entitled to. The Carrier obtained knowledge of the above on February 6, 2020. If proven this is a violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest
1.13: Reporting and Complying with Instructions
SSI Item 10-I: Union Pacific Railroad Policies
"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 March 5, 2020, the Carrier found that "... the following charges against you have been sustained:

During your scheduled shift spanning February 2 to February 3, 2020, while working as a Truck Operator 2 Tons Plus, you allegedly were dishonest when you informed your manager you were laying off FMLA yet claimed pay that you were not entitled to, for hours that you never worked. Additionally, during your scheduled shift spanning February 5 to February 6, 2020, you allegedly left work without proper authority and

were dishonest when you claimed pay that you were not entitled to. The Carrier obtained knowledge of the above on February 6, 2020. This is a violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest
1.13: Reporting and Complying with Instructions
SSI Item 10-1: Union Pacific Railroad Policies
“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.’

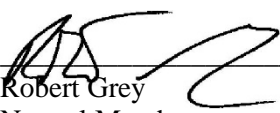
Based on your current record, you are hereby dismissed from all service with the Union Pacific Railroad....”

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 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 24-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

A handwritten signature in black ink, appearing to read "John Schlismann", written over a horizontal line.

John Schlismann
Organization Member

October 27, 2022
Dated