

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. 174
Award No. 174

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

1. The Carrier's discipline (dismissal) of Mr. R. McCormick, by letter dated March 13, 2020, for alleged violation of Rules 1.6 Conduct – Careless; Rule 74.3 Cell Phone and Electronic Device Use; and '... **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 exceedingly harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File UP201KM20D/177752 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. McCormick shall:

"*** be allowed to return to work on the position he was assigned to at the time of his removal from service with all seniority rights restored. The claimant shall be made whole for all financial losses as a result of the Carrier's violation of Rule 22, 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.

It is hereby stated that Mr. McCormick be fully exonerated, and all notations of the dismissal be removed from all Carrier records.' (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 3, 2020, Investigation held March 4, 2020, "... to develop the facts and determine your responsibility, if any, in connection with the below charge.

On 01/30/2020, at the location of 502 C Street, in Wynne, AR, at approximately 08:33 hours, while employed as a Trk Asst Fmn, you allegedly were observed with a hand held cell phone while operating vehicle 56310. This information was provided by DriveCam video on 01/31/2020 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

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 13, 2020, the Carrier found that "... the evidence more than substantially supports the charges against you. The following charge has been sustained:

On 01/30/2020, while employed as a Trk Asst Fmn, you were observed with a hand held cell phone while operating vehicle 56310. This information was provided by DriveCam video on 01/31/2020 This is a violation of the following rule(s) and/or policy:

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

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

October 27, 2022
Dated