

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. 175

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

1. The Carrier’s discipline (dismissal) of Mr. T. Bonton, by letter dated March 25, 2020, for alleged violation of Rule 136.4.1 was exceedingly harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File UP709SN20D/1738503 MPR).
2. As a consequence of the violation referred to in Part 1 above, the Organization requests that Mr. Bonton be returned to work on his position of welder ‘... and the claimant shall be made whole for all financial loses 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 March 9, 2020, Investigation held March 12, 2020, "... to develop the facts and determine your responsibility, if any, in connection with the below charge.

On 02/21/2020, at the location of Opelousas, LA, near Milepost 590.46, Dequincy Subdivision, at approximately 14:23 hours, while employed as a Welder, you allegedly worked outside of the track authority limits, while working with Gang 2885. You received track and time for number 56-56 CPL 590 Main Switch N to CP 585 Main Switch N, however, it was discovered you were actually working at MP 590.46, of the Dequincy Subdivision This is a possible violation of the following rule(s) and/or policy:

136.4.1: Exclusive Track Occupancy

Under the MAPS Policy, this violation is a Critical 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 25, 2020, the Carrier found that "... the evidence more than substantially supports the charges against you. The following charge has been sustained:

On 02/21/2020, while employed as a Welder, you worked outside of the track authority limits, while working with Gang 2885. You received track and time for number 56-56 CPL 590 Main Switch N to CP 585 Main Switch N, however, it was discovered you were actually working at MP 590.46, of the Dequincy Subdivision This is a violation of the following rule(s) and/or policy:

136.4.1: Exclusive Track Occupancy

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

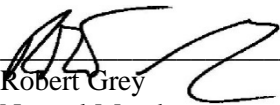
The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, 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 determination of culpability. However, the mitigating factors proven by the Organization persuade the Board that


dismissal is excessive under the facts and circumstances of this record. Claimant is reinstated to service with full seniority and benefits unimpaired, but without back pay, at Claimant's pre-existing MAPS 2 Training 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

February 13, 2023
Dated