

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. 176  
Award No. 176

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

1. The Carrier's discipline (dismissal) of Mr. M. Harris, by letter dated June 25, 2020, for alleged violation of Rule 1.6: Conduct – Dishonest; Item 10-I: Union Pacific Railroad Policies – Statement of Policy on Ethics and Business Conduct – Critical; and Additionally 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 UP402DRR20/1739764 MPR).

2. As a consequence of the violation referred to in Part 1 above, the Organization requests the:

'Claimant's Dismissal is expunged from his personal record. Claimant be immediately reinstated to service and compensated for all wages lost, straight time and overtime, beginning with the day he was removed from service and ending with his reinstatement to service excluding all outside wages. Claimant be compensated for any and all losses related to the loss of fringe benefits that can result from dismissal from service, i.e., Health benefits for himself and his dependents, Dental benefits for himself and his dependents, Vision benefits for himself and his dependents, Vacation benefits, Personal Leave benefits and all other benefits not specifically enumerated herein that are collectively bargained for him as an employee of the Union Pacific Railroad and a member of the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters. Claimant to be reimbursed for all losses related to personal property that he has now which may be taken from him and his family because his income has been taken from him. Such losses can be his house, his car, his land,

and any other personal items that may be garnished from him for lack of income related to this dismissal.

In short, we herein make the demand that the Claimant be made “whole” for all losses related to his dismissal from service.

The Organization request that in such time in which Mr. Marcus Harris EID 0219213 be re-instated to service that he would not be subjected to any additional probation under the Union Pacific MAPS Policy Specifically Rule 3.7 Arbitration decision in which the carrier can revert employee status to a second triggering/training event with a 36-month retention period.’ (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 18, 2020, Investigation held June 16, 2020, “... to develop the facts and determine your responsibility, if any, in connection with the below charge.

On your assigned rest day of 03/15/2020, while assigned as a Ballast Regulator Operator, you were allegedly dishonest when you were observed taking multiple cases of Union Pacific bottle water from the Addis, LA Depot, and loading the water into your personal vehicle. You subsequently removed the water off of Company property without authorization to do. If proven this is a violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest  
SSI Item 10-I: Union Pacific Railroad Polices  
"The How Matters" Policy  
And that part of 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 June 25, 2020, the Carrier found that “... the evidence more than substantially supports the charges against you. The following charge has been sustained:

On 03/15/2020, while employed as a M/O (Br) Bal Reg, you were observed by a Union Pacific employee loading 16 cases of Union Pacific water from the Addis Depot into the back of your personal vehicle. This is a violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest

Item 10-I: Union Pacific Railroad Policies - Statement of Policy on Ethics and Business Conduct – Critical

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 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.


In accordance with the Board's reasoning in Awards 25, 26, and 27, this Claimant's 24 years of unblemished service persuades the Board that Claimant can be rehabilitated, and that corrective discipline will serve the intended purpose. Claimant panicked on *the* day of the start of the COVID-19 pandemic lockdown. Unable to find bottled water available for purchase for his family at several stores earlier the same day, off-duty Claimant wrongfully availed himself of

bottled water at the Carrier's depot, which was available for use by Carrier employees on Carrier property. The Board notes, in terms of mitigation, not excuse, it is undisputed that Claimant's misconduct did not deprive any Carrier employees of bottled water, as an ample supply thereof remained available at the depot. However, as the Board concluded in Awards 25, 26, and 27: "That said, the Board notes that the Claimant failed in his obligation to the Carrier and emphasizes the likelihood that future seemingly dishonest behavior will surely result in dismissal."

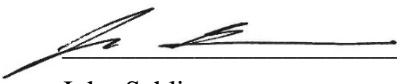
Accordingly, Claimant is reinstated to service with full seniority and benefits unimpaired, but without back pay, at MAPS Training 1 status with a 36-month retention period.

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

February 13, 2023  
Dated