

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. 177
Award No. 177

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

1. The Carrier's discipline (dismissal) of Mr. N. Hill, Jr., by letter dated June 25, 2020, for alleged violation of Rules 1.6: Conduct – Careless; Item 10-I: Union Pacific Railroad Policies – Statement of Policy on Ethics and Business Conduct – Critical; 136.4.1: Exclusive Track Occupancy; 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-2') was exceedingly harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File UP515JF20/1740293 MPR).

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

**** the removal of the of the (sic) discipline of dismissal to be removed from the Claimant's Personnel Record. Also, to be paid and compensated for any and all lost time at the Claimant's respective straight time rate of pa (sic), and any (sic)all overtime to be paid at his respective overtime rate of pay that the gang the Claimant was assigned to was afforded and any employee performing the Claimant's highly recognized work had he not been unjustly and excessively disciplined.

Also, to be returned to active service with all seniority unimpaired, and to include any and all holiday, and all lost time to be credited to Railroad Retirement, hospitalization, to include physician office visit, hospital stays, dental, prescriptions and vision beginning on April 7, 2020, through and including on a continuous basis until this matter is settled. Also, to include any and all expenditures the Claimant may have acquired to include meals

lodging and mileage at the negotiated rate of \$.58 cents a mile from Mr. Hill's place of residence 5417 Ricky Street, Houston, Texas 77033 to the Comfort Suites, Old Town Spring, 323 E. Louetta Road, Spring, Texas, and returning to the Claimant's place of residence for his attendance at the Formal Investigation held on 06/11/2020, account the Carrier unjustly and excessively charged, and disciplined the Claimant without sufficient evidence forcing Mr. Hill in a worse position. Causing him a loss of work opportunity, loss of wages and causing the Claimant financial hardship.

* * *

The Organization also requests that within such time in which the Claimant is reinstated to active service he would not be subject to any additional probation under the current Union Pacific MAPs Policy, specifically "Rule 3.7 Arbitration Decision" in which case the Carrier can revert the employee's status to a second triggering/training event with a thirty-six (36) month retention period.' (Employees' Exhibit 'A-4')."

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 revised Notice of Investigation dated April 16, 2020, Investigation held June 11, 2020, "... to develop the facts and determine your responsibility, if any, in connection with the below charge.

On 04/06/2020, at the location of Houston, TX, near Milepost 356.8, of the Houston Subdivision, while employed as a Welder, you allegedly were involved in a track authority violation. This is a violation of the following rule(s) and/or policy:

136.4.1: Exclusive Track Occupancy
1.6: Conduct – Carelessness
SSI Item 10-I: Union Pacific Railroad Polices
"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 June 25, 2020, the Carrier found that "... the evidence more than substantially supports the charges against you. The following charge has been sustained:

On 04/06/2020, while employed as a Welder, you were involved in a track authority violation. 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
136.4.1: Exclusive Track Occupancy

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.

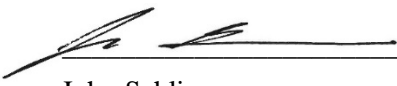
The Board finds that the Carrier did not meet its burden of proof. Therefore, the Claim must be sustained.

AWARD

Claim sustained. Pursuant to Rule 22(f) of the parties' Agreement Claimant is reinstated to service at Claimant's former position, with full seniority unimpaired, and afforded the remedy provided therein. Claimant's record shall not contain any MAPS status pertaining to this matter. 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