

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. 178
Award No. 178

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

1. The Carrier's discipline (dismissal) of A. Castillo, by letter dated July 24, 2020, for alleged violation of Rules 1.6: Conduct – Dishonest; 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 UP517JF20/1740929 MPR).

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

'... the 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 pay, and all overtime to be paid at his respective overtime rate of pay that his assigned Gang was afforded and any employee performing the Claimant's highly recognized work as a Welder had the Claimant not been unjustly and excessively charged a n d disciplined.

Also, to (sic) returned to active service immediately with all seniority unimpaired, to include any and all holidays and all lost time to be credited to Railroad Retirement, Health and Welfare, to include hospitalization, physician office visit, dental, prescriptions, and vision beginning on June 16,2020, 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\$ (sic) .58 cents a mile

from Mr. Castillo's place of residence at 1010 Hackberry Drive, Pflugerville, Texas, to the Courtyard New Braunfels River Village, 750 IH 35 North, New Braunfels, Texas 78130 and returning to Mr. Castillo's place of residence for his attendance at the Formal Investigation held on July 8, 2020, account the Carrier unjustly and excessively charged and disciplined the Claimant without sufficient evidence forcing the Claimant 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 back 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-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 June 23, 2020, Investigation held July 8, 2020, "... to develop the facts and determine your responsibility, if any, in connection with the below charge.

On 06/16/2020 the Carrier gained knowledge that you were allegedly dishonest during the months of May and June 2020, when you falsely claimed payroll hours you were not entitled to. This is a possible violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest
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"

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 July 24, 2020, the Carrier found that "... the evidence more than substantially supports the charges against you. The following charge has been sustained:

On 05/01/2020, while employed as a Welder, you beginning on May 1, 2020 and extended through the first half of June 2020 you were allegedly dishonest when you falsely claimed payroll hours in excess of what you actually worked in an attempt to steal additional payroll. This is a violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest

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.

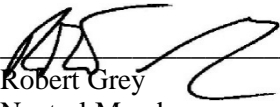
Based on your current record, you are hereby dismissed from all service with the Union Pacific Railroad."

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.

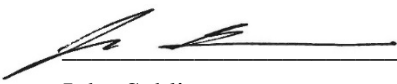
The Board finds substantial evidence of negligence on the part of Claimant, but not substantial evidence of dishonesty. In light of the facts and circumstances of this record, the Board concludes that the dismissal should be modified to a long-term suspension. Claimant is reinstated to service with full seniority unimpaired, but without back pay, at MAPS Training 1 status with a 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