

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. 180
Award No. 180

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

1. The Carrier's discipline (dismissal) of Mr. J. Manning, by letter dated July 28, 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 UP415RR20/1741102 MPR).
2. As a consequence of the violation referred to in Part 1 above, the Organization request that:

'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. Jermaine Manning 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.

As a remedy for this violation, the suspension should be set aside, and the claimant shall be made whole for all financial and benefit losses because of the violation. Any benefit lost including vacation and health insurance benefits shall be restored. Restitution for financial losses because of the violation shall include all straight time pay, overtime pay, and loss of holiday pay for time Mr. Jermaine Manning EID (0449922) was held out of service and that Mr. Manning be returned to 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 June 23, 2020, Investigation held July 9, 2020, “... to develop the facts and determine your responsibility, if any, in connection with the below charge.

On 05/01/2020, at the location of Taylor, TX, near Milepost 144.5, Austin Subdivision, at approximately 00:00 hours, while employed as a Welder, you allegedly 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 possible violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest

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 28, 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.


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

Chris Bogenreif
Christopher Bogenreif
Carrier Member


John Schlismann
Organization Member

February 13, 2023
Dated