

Public Law Board No. 7633

PARTIES) **Brotherhood of Maintenance of Way Employees Division**
) **– IBT Rail Conference**
TO)
) **and**
DISPUTE)
)
) **Union Pacific Railroad Company (former Missouri Pacific**
) **Railroad Company)**

Members of the Board

Jeanne M. Vonhof, Chairman and Neutral Member
Chris Bogenreif, Carrier Member
John Schlismann, Employee Member

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

1. The Carrier’s discipline (dismissal) of Mr. P. Garcia, Jr., by letter dated August 22, 2022, for an alleged violation of Rule 1.6: Conduct – Dishonest; Item 10-I: ‘The How Matters Policy: CEO Letter’, We strive for Excellence, Living our Credo: and additionally Rule 1.6 Conduct – which stipulates ‘... 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.’ was exceedingly harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File UP517KL22/1778174 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant P. Garcia Jr., shall now ‘*** be allowed to return to work with all vacation and seniority rights unimpaired, that the charge and discipline, issued per letter of August 22, 2022, be removed from his personal record, that he be made whole for all time lost due to discipline issued in connection with these charges, and that he be reimbursed for an additional expenses, including those requested in the August 11, 2022 hearing, incurred that would have normally been covered by Carrier benefits, account the Carrier violated Rule 22, of the Agreement.”

FINDINGS OF THE BOARD:

The Board upon consideration of the entire record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended and that the Board has jurisdiction over this dispute.

The Claimant, Pablo Garcia, Jr. began working for the Carrier in 2018 and has established seniority in the Maintenance of Way Department, with no prior record of discipline. He was employed as a Welder at the time of the events leading to this claim. The Claimant was charged with dishonesty for claiming pay for which he was not entitled and leaving his tie-up location early for the day without notifying his manager on 07/21/2022. After a hearing held on 08/11/2022 the Carrier concluded that the evidence more than substantially supported the charges against him. The charge was sustained and the Claimant was dismissed from service for violation of Rule 1.6: Conduct – Dishonesty and Item 10-1: “The How Matters Policy”: CEO letter, We Strive for Excellence, Living Our Credo. In addition, the Carrier stated in the dismissal notice that 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.

According to the testimony presented at the investigation, Claimant and his partner, Mr. Adrian Martinez (Gang 3568), the Employee in Charge (EIC), were part of a welding crew instructed to complete a rail adjustment on the Toyah Subdivision. Gang 3568 started their ten-hour workday at 0700 hours the morning of July 21, 2022. They traveled to their work location near West Odessa but were not given track authority to perform their work, which Martinez communicated to his Manager, C.S. Robinson at about 1300 hours. The gang did not take a lunch that day and so were scheduled to complete their work at 1700 hours.

Manager C.S. Robinson completed his Track Inspector Evaluation around 1530 and he observed that the welding truck for Gang 3568 was tied up at the Big Springs Depot. Manager Robinson called Martinez and asked for Gang 3568's location. Manager Robinson reported that Martinez said that he and the Claimant were on their way back to Big Springs because they could not obtain permission to get on the track to complete their work. Manager Robinson stated that he advised Martinez that he was standing in front of their welding truck at Big Springs, and at that point, Martinez advised Manager Robinson that instead of heading back to Big Springs, he and the Claimant were on their way back to Odessa. Robinson said that was all he needed to know, concluding that they had completed work for the day before the end of their shift.

The records show that a request for ten (10) hours of pay for that day was submitted for the Claimant. The Claimant's Manager did not approve the payroll because of the discrepancy between the Driver's Log, which showed that the Claimant had finished with the truck at 1451 hours, and his off-duty time, which was entered as 1730 hours. The Carrier argues that claiming and receiving pay for hours not worked is a violation of Rule 1.6 – Conduct - Dishonesty. Due to the nature of the violation, the Carrier argues that it had no other option but to dismiss the Claimant for his dishonest act.

The Organization argues that the Carrier violated certain procedural requirements guaranteed under Rule 22 of the collective bargaining agreement between the parties. In particular, the Organization argues that the charges were not sufficiently precise because they cited SSI-10-1, which other arbitration awards have determined is impermissibly vague. In addition, the Organization argues that the Hearing Officer prejudged the guilt of the Claimant by removing him from service prior to the formal investigation and also by suggesting during that investigation that the hearing transcript would be reviewed by an arbitrator. According to the Organization, these

defects indicate that the Claimant was not afforded a fair and impartial hearing.

The Board concludes that the procedural objections raised by the Organization do not compel the Board to sustain the claim on this basis. The charges provided to the Claimant were sufficiently precise to notify him of the alleged fraudulent activity with which he was charged in order for the employee and the Organization to respond to the charges. They were also notified of the rules allegedly violated.

In addition, the Carrier does not violate an employee's due process rights when they remove the employee from service when they are facing allegations of certain very serious violations, including dishonesty. Rule 22(i) permits withholding employees from service, pending a formal investigation, where the employee has been charged with a serious or flagrant violation of its rules. In such cases, the Carrier must make every effort to schedule and hold a formal investigation within twenty (20) calendar days of the date the employee is suspended. A violation of Rule 1.6 Conduct – Dishonesty is a serious violation subject to dismissal and the Carrier scheduled the hearing to be held within 20 days of Claimant being withheld from service. In addition, the record of the investigation, taken as a whole, does not demonstrate that the Hearing Officer prejudged the guilt of the Claimant. The evidence demonstrates that the investigation was thorough and the Hearing Officer did not display a bias against the Claimant in his rulings on the presentation of documents or questioning of witnesses throughout the hearing.

As for the merits, the Organization contends that in a case dismissing an employee for dishonesty, the Carrier is required to establish ill intent on the part of the employee. The Carrier must establish that the Claimant clearly intended to defraud the Carrier and game the system. The Organization contends that in this case, the Carrier cannot meet this substantial burden of proof.

The Carrier argues that there is substantial evidence that the Claimant was dishonest. The

evidence establishes that he was working out of the Big Springs Depot that day. His partner tied up their work vehicle more than two hours before the end of their shift and they traveled to Odessa in a personal vehicle before the end of the workday. Both were staying in Odessa for the Company at that time. According to the Carrier, this pattern of events is sufficient to establish that the Claimant intended to defraud the Company and claim pay for time not worked, the last several hours of his scheduled workday on July 21, 2022.

The Organization argues that the evidence demonstrates that when the EIC called Manager Robinson earlier in the day and reported that they could not get on the tracks to perform their assigned job, Robinson said, "it is what it is" and that they would try again tomorrow. Both the Claimant and the EIC stated that they went to Odessa to pick up PPE and a rail drill that afternoon. The Carrier argues that this does not make sense because the two were in Odessa earlier in the day and could have picked up these items at that time. In addition, it is unusual to travel in a personal vehicle to pick up work-related equipment, as the Claimant acknowledged.

Whether it was efficient or not for the gang to return to Odessa for the equipment, the Organization argues that the issue before the Board involves whether the Claimant was deliberately dishonest. The Claimant was expected to follow the directions of his EIC. It was EIC Martinez who decided to tie up the Company vehicle two hours before the end of their shift, and to use his personal vehicle to return to Odessa, where the gang was staying, allegedly in order to retrieve PPE and a rail drill. Claimant was following the orders of the EIC when they traveled to Odessa before the end of the workday. It was also the EIC who spoke to Manager Robinson and told him they were headed to Big Springs when in fact they had already left that location. It was the EIC who reported the Claimant's hours.

Each employee bears responsibility for ensuring that their work hours are accurately

reported, and that they accept pay only for hours actually worked. The Claimant bears responsibility for the fact that more time was claimed for him than he worked on the day in question, and therefore, significant discipline is in order. However, the Board cannot conclude that his actions rose to the level of deliberate dishonesty that should sever the employment relationship. He did not lie to the Manager about the crew's whereabouts; he did not report the hours; and it is not clear on the record that he knew how many hours were reported for him by his EIC that day. On this record, the Board concludes that the penalty of dismissal is arbitrary and harsh for the Claimant's conduct, given his level of responsibility for the day's events. Under these circumstances Claimant shall be reinstated without backpay and the dismissal reduced to a MAPS I level of discipline, with a One-Year Review Period.

AWARD

The claim is sustained in part. The Claimant shall be reinstated without backpay and assessed a MAPS I Training with a One-Year Review Period. The Carrier is directed to comply with this Award within 30 days of the date that any two members of the Board affix their signature to the Award.

Signature 

Jeanne M. Vonhof
Neutral Member



Chris Bogenreif
Carrier Member



John Schlismann
Organization Member

Dated: May 2, 2025