

**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. A. Martinez, by letter dated August 22, 2022, for an alleged violation of Rule 1.6: Conduct – Dishonest; SSI 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 UP402RR22/1778173 MPR).
2. As a consequence of the violation referred to in Part 1 above, we request that Claimant A. Martinez shall now have his:  
  
‘... 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. Adrian Martinez 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. Adrian Martinez EID (049111) was held out of service and that Mr. Martinez be returned to service."

**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, Adrian Martinez, has established seniority with the Carrier's Maintenance of Way Department. At the time of these events, he was working as Track Foreman. He had 11 years of seniority with no record of prior discipline. The Claimant received notice that he was being investigated for dishonesty when he allegedly left his tie-up location early on 07/21/2022 without notifying his manager; claimed payroll to which he was not entitled, and also allegedly was dishonest with his manager when asked about his location. An investigation was held on August 11, 2022. By letter dated August 22, 2022, the Claimant was notified that the Carrier found, on the basis of the evidence presented at the investigation, that he was guilty of the charges. The Carrier dismissed Claimant from service, concluding that he was in violation of Rule 1.6: Conduct-Dishonesty, as well as 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, the Employee in Charge (EIC), and his partner, Mr. Pablo Garcia (Gang 3568), 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. They 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 hours and he observed that the welding truck for Gang 3568 was tied up at the Big Springs Depot. Manager Robinson called Claimant Martinez and asked for Gang 3568's location. Claimant Martinez said that he and Garcia 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 reported that he advised Martinez that he was standing in front of their welding truck at Big Springs as they were talking, and at that point, Martinez told Manager Robinson that instead of heading back to Big Springs, he and Garcia were on their way back to Odessa. Robinson said that was all he needed to know and the phone conversation ended.

The records show that the Claimant submitted a request for ten (10) hours of pay for that day. 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. In addition, the Carrier argues that the Claimant engaged in other forms of dishonesty when he failed to truthfully report to his Manager the location of his gang when asked. Due to the nature of the violation, the Carrier argues that it had no other option but to dismiss the Claimant for his blatantly dishonest acts.

The Organization argues that the Carrier violated certain procedural requirements guaranteed under 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 Carrier prejudged the guilt of the Claimant by taking him out of service before the investigation. 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 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 and because of the nature of the charges, is held to a higher standard of proof. 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 Claimant and his gang were working out of the Big Springs Depot that day.

He was the EIC and he decided that they should tie up their work vehicle at Big Springs more than two hours before the end of their shift. They then 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 other gang member, Garcia, stated that they went to Odessa to pick up PPE and look for 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 before returning to Big Springs. In addition, it is unusual to travel in a personal vehicle to pick up work-related equipment. 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 Board concludes that there is substantial evidence on the record that the Claimant was intentionally dishonest in his dealings with the Carrier. As the EIC of the welding gang, Claimant turned in the Company vehicle more than two hours before the end of the shift and then used his personal vehicle to travel back to Odessa, where he was staying for the Company. The record demonstrates that it is unusual to use a personal vehicle to complete Company work and that the Claimant and his crew member had used the personal vehicle to carpool from Odessa to Big Springs. The Claimant did not request or obtain prior permission to travel to Odessa to perform Company work or to use a personal vehicle to do so. The Claimant also admitted that it did not take the crew an hour and a half in Odessa to obtain PPE and look for a rail drill once they arrived, although they requested pay until the end of the shift.

In addition, there is substantial evidence that the Claimant was not honest with his Manager when he initially reported that his crew was traveling back to Big Springs in the Company vehicle, and the Manager then told him he was looking at their Company vehicle already parked at Big Springs. The Claimant then changed his story and told the Manager that they were on the way to Odessa. Claimant did not tell his Manager that they were traveling there for Company business.

There is substantial evidence on this record that the Claimant violated the Carrier's rules and standards regarding honesty. Substantial evidence supports the charge that the Claimant requested pay for his gang for time not worked. In addition, there is substantial evidence that he did not initially report truthfully the whereabouts of his welding gang, when asked by his Manager.

Honesty is a bedrock value in the employment relationship. Welding gangs often work on their own without immediate supervision and the Carrier must trust them, and particularly the EIC, to report their time, work activities, and locations accurately. The Carrier may legitimately expect the honest reporting by employees of hours of work and the location of work gangs. There is substantial evidence in this record that the Claimant failed to do so.

Once the bond of trust is broken in the employment relationship, the Carrier may reasonably consider the relationship irreparably harmed. Dismissal is the usual penalty for intentional violations of Rule 1:6 Conduct Dishonesty and is appropriate on this record. Under these circumstances, the Board cannot conclude that the dismissal in this case was arbitrary, harsh or discriminatory. Therefore, the claim is denied.

**AWARD**

For the reasons set forth above, the claim is denied.

Signature 

Jeanne M. Vonhof  
Neutral Member



Chris Bogenreif  
Carrier Member



John Schlismann  
Organization Member

Dated: May 2, 2025