

Public Law Board No. 7633

PARTIES) **Brotherhood of Maintenance of Way Employes 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. L. Sandoval, by letter dated September 17, 2020, for an alleged violation of Rule 1.6: Conduct – Quarrelsome; Rule 1.6 Conduct – Discourteous; SSI Item 10-I: Union Pacific Railroad Policies (Statement of Policy on Ethics and Business Conduct); The How Matters Policy 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 DM-2220-UP-200/1744493 MPR).
2. As a consequence of the violation referred to in Part 1 above, we request that Claimant L. Sandoval shall now “*** be exonerated of all charges, placed back in service and be reimbursed for all wage loss sustained as a result of the Carrier’s action.”

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.

Claimant L. Sandoval established seniority within the Carrier's Maintenance of Way Department. During the period leading up to the Claimant's dismissal, the Claimant was assigned to a foreman position, with eighteen (18) years of service to the Carrier and no record of prior discipline.

The Claimant was notified via letter dated August 24, 2020 that he must attend an investigation to determine his responsibility, if any, for an incident that occurred on 08/20/2020. The notice stated that while employed as a Track Foreman on that date, "you were in violation of Carrier rules and policies when you were involved in an altercation with another employee. This is a possible violation of the following rule(s) and/or policy:

1.6: Conduct – Quarrelsome
1.6: Conduct - Discourteous
SSI Item 10-I: Union Pacific Railroad Policies (Statement of Policy on Ethics and Business Conduct)
The How Matters Policy

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."

The Notice also cited the Company's Violence and Abusive Behavior in the Workplace policy.

The investigation into this incident was held on September 1, 2020. By letter dated

September 17, 2020 the Carrier concluded that sufficient information was provided during that hearing to uphold the charges against Claimant Sandoval, and he was subsequently dismissed from Carrier's service. The Organization filed this claim on behalf of the Claimant under this Board's jurisdiction.

The Claimant also filed suit against the Company in relation to his dismissal. The Claimant's legal action was resolved in a settlement agreement signed by the Claimant on January 16, 2024. That agreement states that the Claimant's employment with the Company "has permanently and irrevocably ended." The Claimant further agreed to "withdraw, release and forfeit any pending claims, appeals or other actions filed by his union pursuant to the collective bargaining agreement that may be pending as a result of his employment and/or termination." He also agreed to give up any claims under the Railway Labor Act. However, the Claimant did not officially request that this claim be withdrawn, and the Organization has continued to pursue this claim.

The Carrier argues, however, that the Board no longer has jurisdiction over this claim. According to the Carrier, the Claimant has relinquished any legal or contractual right to proceed with this claim over his employment. Therefore, the Carrier argues that the claim should be dismissed on this basis alone.

The Organization disputes the Carrier's argument. According to the Organization, the Carrier did not raise the issue of jurisdiction during the investigation or the claims procedure, and therefore, cannot raise it now. The Board's jurisdiction is separate from judicial actions in regard to the Claimant's employment, the Organization argues, and this Board is not stripped of its jurisdiction by any separate legal actions the Company and the Claimant may have taken with regard to his employment. The Carrier argues that it could not have raised this jurisdictional issue

during the investigation or in its response to the claim in 2020 because the settlement agreement was not signed until 2024. The Carrier contends that the Board should dismiss the claim now as beyond its jurisdiction, based upon the settlement agreement.

Ordinarily, issues and evidence which are not brought forward during the processing of a claim on the property constitute new argument which may not be considered by this Board. Third Division Award No. 37760. That Award nevertheless, goes on to note:

*“However, an exception to this general proposition is in place. And that exception concerns challenges to jurisdiction. Jurisdictional challenges, as opposed to procedural challenges, may be raised at any time. A failure to raise jurisdictional challenges on the property does not foreclose their consideration after the matter is placed before the Board. In this regard see Third Division Award 27575, wherein the Board stated:
The Organization’s contention that the jurisdictional issue cannot be considered because it is new argument raised for the first time before this Board is not well-founded. This Board has over the years held that jurisdictional issues can be raised at any time. See Third Division Awards 8886, 9189, 10956, 16786, 19527, 20165 and 20832.”*

Therefore, the Board concludes that the Carrier is not time-barred from raising the jurisdictional issue because it was not raised earlier in the proceedings. Nevertheless, although the Board will consider the settlement agreement, the Board concludes that there is no need to resolve the issue of whether the existence of the settlement agreement means that this Board no longer has jurisdiction of this claim, as the Carrier argues. It is clear from the record here that the Claimant has agreed that his employment with the Company has permanently ended and that he has agreed to relinquish any other compensation from the Company. Therefore, the remedy sought by this claim, which includes Claimant’s reinstatement to service, and backpay and other benefits with such reinstatement, cannot be granted. Here after filing a claim, the Claimant has

taken actions that make the awarding of any remedy under this claim impossible. Under these circumstances, the Board considers the claim as moot. Therefore, the Board concludes that the claim must be dismissed as moot.

AWARD

The claim is dismissed as moot.

Signature 

Jeanne M. Vonhof
Neutral Member



Chris Bogenreif
Carrier Member



John Schlismann
Organization Member

Dated: May 2, 2025