

**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. C. Piper, by letter dated February 22, 2023, for an alleged violation of EEO Policy – Dismissal; Rule 1.6: Conduct – Quarrelsome; 1.6 Conduct – Discourteous; SSI 10-I: Union Pacific Railroad Policies (Statement on Ethics and Business Conduct); 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 UP400RR23/1784020 MPR).
2. As a consequence of the violation referred to in Part 1 above, we request that Claimant C. Piper’s 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. C.D. Piper 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. C.D. Piper EID (0444610 ) was held out of service and that Mr. Piper 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.

Claimant C. Piper has established and holds 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 Machine Operator (tamper) position. He had twelve (12) years of service at the time and no record of prior discipline.

The Claimant was assigned to work together with Machine Operator Jacobs, also a tamper operator, on February 6, 2023. The tamper broke down and as they were trying to repair it, a verbal altercation followed between the two employees. Following this exchange, Machine Operator Jacobs reported to Foreman Ragsdale that the Claimant had referred to Jacobs using a racial slur, calling him a "bitch ass nigger." According to the Claimant, both employees are African-American.

Ragsdale called Jordan Morgan, Manager of Track Programs, to meet him at Mile Post 173.6 as soon as possible. Foreman Ragsdale reported to Morgan what Machine Operator Jacobs had told him about being called a racial slur by the Claimant. In his statement Ragsdale stated that Jacobs was so upset that he was on the verge of tears and Morgan confirmed that was true when he saw Jacobs. Ragsdale also reported in his statement that Jacobs said that he (Jacobs) "would whip his ass" and that Jacobs would kill the Claimant if he ever talked to him that way again. The incident was elevated to the EEO office, which found that the Claimant had used the racial slur attributed to him.

By letter dated February 9, 2023 the Carrier notified the Claimant that he was to appear at a formal investigation to develop facts and determine his responsibility, if any, in connection with allegations that on February 6, 2023 he was allegedly involved in making a racial slur during an altercation with another employee. An investigation was held on February 13, 2023. By letter dated February 22, 2023 the Carrier found that there was sufficient evidence established during the investigation to conclude that on February 6, 2023 while employed as a track foreman, the Claimant had used a racial slur during an altercation with another employee in direct violation of the UP EEO Policy, as well as Rule 1.6: Conduct – Quarrelsome; Rule 1.6 Conduct – Discourteous; SSI 10-I: Union Pacific Railroad Policies (Statement of Policy on Ethics and Business Conduct); The How Matters Policy. Additionally, the Company noted that Rule 1.6 Conduct 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.” The Claimant was dismissed from service.

The Organization maintains that the Carrier had preconceived judgment of the Claimant’s guilt. The Organization submits that the Carrier had already determined the Claimant’s guilt when it sent the February 9, 2023 Notice of Investigation and that it held the Claimant’s hearing not as a reasonably objective inquiry but only as a formality required by the Agreement before the announcement of preconceived judgement. In addition, removing an employee from service and withholding compensation from that employee as a result also indicates prejudgment, according to the Organization.

The Organization argues that the Carrier failed to call all relevant witnesses, a further denial of the Claimant’s due process right to a fair and impartial investigation. Instead, the

Carrier had its witness read into the record the written statements of the witnesses to the events. Therefore, the Claimant was not permitted the right to face his accusers or cross-examine them regarding what they actually saw or heard on the day in question, according to the Organization.

The Board concludes that there is not sufficient evidence in the record to establish that the Carrier prejudged the Claimant's guilt by the issuance of the notice of the investigation. Nor is the Claimant's removal from service prior to the investigation evidence of prejudgment of his guilt. The Carrier may remove employees from service pending a formal investigation if they are charged with committing a serious act of misconduct.

In addition, the Board cannot conclude that the failure of the Carrier to call the witnesses in person at the hearing was so prejudicial to the Claimant's rights that the discipline must be overturned. The Hearing Officer made it clear from the beginning of the hearing that all of the witnesses who had provided statements were available for questioning by the Organization by telephone. Therefore, the Organization was provided with the opportunity to cross-examine any of the witnesses to the altercation, in order to examine what they actually saw and heard, and whether there were any discrepancies in their written statements. The Organization declined that opportunity during the hearing. Testimony by telephone is common in railroad arbitration and has been accepted by arbitration boards as meeting the due process requirements of Rule 22 to provide a fair hearing. Under these circumstances the Board cannot conclude that the Carrier failed to conduct a fair and impartial hearing.

As for the merits of the claim, the Carrier argues that there is substantial evidence that the Claimant called Mr. Jacobs a racial slur. This is an impermissible violation of the Carrier's EEO

policies, and other rules and policies, according to the Carrier. For such violations, the Carrier argues that dismissal is the appropriate remedy.

The Organization argues that the Carrier failed to establish in the hearing that the Claimant said the words attributed to him. In addition, the Organization argues that the Carrier has completely ignored the fact that Jacobs made threatening remarks about the Claimant that day. Dismissing the Claimant while failing to discipline Jacobs in any way is an arbitrary application of discipline and therefore, the dismissal of the Claimant must be overturned. The Organization argues further that the Claimant has never been in trouble before and apologized for any comments he made during a heated conversation.

The Board concludes that there is substantial evidence that the Claimant was involved in a verbal altercation with Mr. Jacobs. In addition, two witnesses described that Claimant used the “n” word in a racial slur directed at Jacobs. The Claimant did not outright deny saying it during the investigation. Instead, he stated that if he said it, he was sorry for it. On this basis, the Board concludes that the Carrier has provided substantial evidence that the Claimant made the racial slur attributed to him.

There is no place for such language in the workplace. Racially-based name-calling encourages discord and disharmony in the workplace. As is clear by what happened in this case, the use of such language, especially the use of the “n” word, often has the effect of making a verbal altercation much worse, encouraging anger in and possible retaliation by the person to whom it is directed. Jacobs’ reaction in this case reflects the strong response aroused in him by the use of this racial slur against him. While the Carrier’s rules also prohibit the use of threatening language, the evidence demonstrates that these comments did not provoke the Claimant, but rather were said in reaction to his racial slur. For this very reason the Carrier has a strong interest

in banning the use of such language and significant discipline is in order in this case for the Claimant's name-calling.

Nevertheless, the Board concludes that on this record the penalty of dismissal is unduly harsh and arbitrary. In this case there is no evidence that the comment was motivated by racial animus, as this is not a case where a racial slur has been directed at a person of another race. Claimant's conduct did not amount to clear racial discrimination under the Company's EEO policies. Although the Carrier may legitimately bar the use of such language by all employees, the Board concludes that under these circumstances dismissing the Claimant, who otherwise has a good record, for his one-time use of this slur under the circumstances present in this case amounts to a penalty that is harsh, excessive and arbitrary. Returning the Claimant to work without backpay should be sufficient to convince him of the need to refrain from such conduct in the future.

## AWARD

The claim is sustained in part. The Claimant shall be reinstated without backpay and the dismissal reduced to 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