

**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. Montilepre, by letter dated January 20, 2023, for an alleged violation of Rule 1.6: Conduct – Insubordinate 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 UP204KM22D/1785488 MPR).
2. As a consequence of the violation referred to in Part 1 above, we request that Claimant A. Montilepre shall now:

‘... be allowed to return to work with all vacation and seniority rights unimpaired, that the charge and discipline, issued per letter of January 20, 2023 from Jason Rea, AVP Engineering Track Renewal & Construction South, resultant investigation held January 10, 2023, be removed from the employees (sic) personal record, that the employee be made

whole for all time lost due to discipline issued in connection with these charges, and that the employee be reimbursed for any additional expenses, including those requested in the January 10, 2023 hearing, incurred that

would have normally been covered by Carrier benefits, account the Carrier violated Rule 22 of our Agreement

\* \* \*

The Claimant shall be made whole for all financial losses (sic) as a result of the alleged violation, including compensation for all wages lost, straight time and overtime, to be paid at the rate of position assigned at the time of removal of service, beginning with the day the Claimant was removed from service and ending with the date Claimant is returned to service. This amount is not to be reduced by earnings from alternate employment, obtained by the Claimant while wrongfully removed from service. This should also include any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the Claimant was out of service. Any overtime needs to be included for the lost overtime opportunities for any position the Claimant could have held during the time he was removed from service, or on overtime paid to any junior employee for work the Claimant could have bid on and performed had he not been removed from service. The Claimant shall 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. The Claimant is 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

reinstated to service and made “whole” for any and all losses related to his dismissal from service.

It is hereby stated that Mr. Montilepre be fully exonerated, and all notations of the dismissal be removed from all Carrier records.”

**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, Mr. Anthony Montilepre, began working for the Carrier in 2018 and has established seniority in the Maintenance of Way Department. During the period leading up to the Claimant’s dismissal the Claimant was assigned to a Truck Driver position, with almost five (5) years of service and no record of prior discipline.

Claimant received notification that he was being investigated for an incident of insubordination on 11/28/2022 when he allegedly refused to perform work assigned by his Manager. An investigation was held on 01/10/2023 and by letter dated 01/20/2023 the Claimant was notified that the Carrier had concluded that the evidence brought forth at the hearing supported the charges against him. He was dismissed from service for violation of Rule 1.6: Conduct – Insubordinate.

On 11/28/2022 the Claimant held the position of a Truck Operator. He was assigned to complete a frog welding job that day. The evidence demonstrates that Claimant refused to perform the welding work. He testified at the investigation that he thought he could refuse to do the welding work because it was work outside of the work classification he was holding at that time.

The Organization argues that the Carrier preconceived judgment of the Claimant’s case.

According to the Organization, the Carrier had already determined the Claimant's guilt when it sent the December 7, 2022 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. The Organization argues that taking the Claimant out of service before a formal investigation serves as further evidence of prejudgment of the Claimant's guilt. In addition, the Organization argues that the essential fairness of the process was compromised by the Carrier when it did not ensure that the Hearing Officer made any finding of fact or the ultimate disciplinary decision.

The Board concludes that the procedural objections raised by the Organization do not compel the Board to sustain the claim on this basis. 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 insubordination. 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 – Insubordination 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 bias against the Claimant in the presentation of documents or questioning of witnesses throughout the hearing. In addition, the Claimant here admitted during the investigation that he refused to perform the work on the date in question, which eliminates any questions concerning credibility.

The Organization argues that there is not substantial evidence that the Claimant had the

intention to engage in insubordination, however. The Claimant had worked in another area where he said that employees were allowed to refuse work that was outside of their classification, relying upon their rights under the collective bargaining agreement, and he thought that the same policy applied in this area. Therefore, according to the Organization, he was not placed on adequate notice that his failure to perform the work in question would be considered insubordination and could lead to dismissal.

The Board concludes that there is substantial evidence that the Claimant engaged in insubordination on November 28, 2022. The evidence demonstrates that Claimant was told by his Manager to perform the welding work and he refused to do so. The Manager brought the Claimant's Foreman into the discussion and told the Foreman and the Claimant that he was assigning the welding work to the Claimant as the most qualified welder in the area. The Claimant had received training on frog welding within the prior month. The Claimant again refused to perform the work and the Manager took him out of service for insubordination. The Grievant admitted at the investigation that he was insubordinate when he refused to perform the work and said he apologized to his Manager at that time.

The Claimant testified that he believed he had a right to refuse the work as being out of his classification, relying upon his understanding of the Union contract and a practice with which he said was in effect in the UP North area. Nevertheless, the Manager made it very clear to the Claimant that he was being ordered to perform the welding job on November 28, and provided him several opportunities to accept the work. He also assured the Claimant that he would be paid at the higher welder's rate for the work performed.

Employees are trained on the work rules and written policies which inform them that a refusal to perform work, rather than just a failure to do so, will be considered insubordination and

provide grounds for dismissal. Employees know that a refusal to follow an order will likely result in dismissal. Therefore, the Claimant was on notice that when he repeatedly refused to perform the work in question when ordered to do so by a Manager, the likely consequences would be that he was subjecting himself to dismissal. If the Claimant believed that he had a right under the Union contract not to perform work outside of his assigned classification, he should have performed the work at that time and grieved later.

Insubordination is considered one of the most serious types of employee misconduct because it undermines the Employer's ability to operate the business effectively. On this record, the Board concludes that the penalty of dismissal is not harsh, arbitrary or excessive.

**AWARD**

The claim is denied.

Signature 

Jeanne M. Vonhof  
Neutral Member



Chris Bogenreif  
Carrier Member



John Schlismann  
Organization Member

Dated: May 2, 2025