

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. D. Alphin, Jr., by letter dated October 21, 2022, for an alleged violation of Rule 1.6: Conduct – Dishonest; Rule 1.6: Conduct – Quarrelsome; Rule 1.6 Conduct – Discourteous; Item 10-I: Union Pacific Railroad Policies – Policy to Address Violence and Abusive Behavior in the Work Place – Dismissal; Item 10-I: Union Pacific Railroad Policies “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 UP703SN22D/1781405 MPR).
2. As a consequence of the violation referred to in Part 1 above, we request that Claimant D. Alphin, Jr. shall now have:

‘... all vacation and seniority rights unimpaired, that the charge and discipline a Dismissal violation, issued per letter of October 21, 2022 from Jason Rea’s, AVP Engineering,

resultant investigation held October 21, 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 any additional expenses, including those requested in the October 21, 2022 hearing, incurred that would have normally been covered by Carrier benefits, account the Carrier violated Rule 22, of our Agreement.

* * *

*** Mr. Alphin be fully exonerated, and he be reinstated to his former job assignment with a clean record and full back wages of days missed.

The Claimant shall be made whole for all financial losses as a result of the violation including compensation for.

1) Straight time for each regular workday lost and holidays pay for each holiday lost, to be paid at the rate of the position assigned to the Claimant at the time of removal of service. This amount is not reduced by earnings from an alternative employment obtained by the Claimant while wrongfully removed from service.

2) Any general lump sum payment or retroactive general wage increase provided in an applicable agreement that becomes effective while the Claimant was out of service.

3) Overtime pay for lost overtime opportunities based on the overtime for any position Claimant could have held during the time claimant was removed from service or overtime paid to any junior employee for work that Claimant could have bid on and performed had he not been removed from service.

4) Health, Dental and Vision Care premiums, deductibles, and co-pays that he would not have paid had he been- not been unjustly removed from services.

All notations of this dismissal be removed from all the Carrier's 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. Delbert Alphin, Jr., 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 Truck Driver position on a traveling system gang. He had over eighteen (18) years of service to the Carrier and no record of prior discipline.

By letter dated October 5, 2022 the Carrier notified the Claimant to appear at a formal investigation to develop facts and determine his responsibility, if any, in connection with allegations that on October 3, 2022, the Claimant was involved in a verbal altercation with his track foreman and threatened physical violence against another employee. A formal investigation was held on October 13, 2022. By letter dated October 21, 2022 the Carrier found that evidence at the investigation had established that on October 3, 2022, while employed as a T/O 2T+Fuel Trk, the Claimant was involved in a verbal altercation with his track foreman and had allegedly threatened physical violence in violation of Rule 1.6: Conduct – Dishonest; Rule 1.6: Conduct – Quarrelsome; 1.6 Conduct – Discourteous; Item 10-I: Union Pacific Railroad Policies – Policy to Address Violence and Abusive Behavior in the Work Place – Dismissal; Item 10-I: Union Pacific Railroad Policies “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.”

The Claimant was observing a DOT rest day on October 3, 2022. He was assigned to a

gang which on that day was loading trucks and equipment onto a work-train to be moved to a different location. Claimant was in communication throughout the day with various employees about whether his truck would be loaded on October 3, which he believed would mean that he would not have to come in to work the following day. When he was eventually informed by Foreman E. Shanks at about 1930 hours that he would have to come in the following day, he engaged in a conversation with Shanks, overheard by Manager Jordan Morgan, which the Carrier concluded constituted threatening language, as well as quarrelsome and discourteous conduct, leading to Claimant being dismissed from service.

The Organization contends 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 October 5, 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 evidence demonstrates that the Hearing Officer did not display bias against the Claimant in the presentation of documents or questioning of witnesses throughout the hearing. The investigation was thorough, and the Organization was provided the opportunity to present its evidence and question the Carrier's witnesses. The Board concludes that there is not convincing evidence that the Claimant failed to receive a fair and impartial hearing. The procedural objections raised by the Organization do not compel the Board to sustain the claim on this basis.

The Organization argues that there is not substantial evidence in the record that the Claimant engaged in the most serious charge against him, making a physical threat. There is substantial evidence that the Claimant was scheduled for October 4 but stated that he had received information on October 3 from a bus driver, a timekeeper, and another foreman that his truck was or would be loaded on October 3 and that he was released for the following day. However, when

Foreman Shanks informed him at about 1930 hours that his truck was not loaded and that he was not released from work on October 4, the Claimant acknowledged during the investigation that he said, “Eastwood, if I come in tomorrow and my truck is already loaded, you are going to fucking regret it.” Shanks and Morgan also presented evidence that Shanks asked the Claimant what he meant by that comment, and the Claimant replied, “When I show up in the morning, if my fucking truck is loaded, you are going to find out.”

The Organization argues that this language is not physically threatening, and what the Claimant really meant was that he was going to report the Foreman to the Manager. However, he was asked what he meant by the words “you will fucking regret it,” at the time he made the comment and he did not state that all he meant was that he would report the Foreman to Management, but rather told Shanks “you are going to find out.” Foreman Shanks testified that he felt threatened, in part because of this comment and in part because of the Grievant’s conduct during the entire conversation. The Claimant admitted at the investigation that he was angry and used profanity in expressing it, accusing the Foreman of “fucking with his family” because the Claimant had wanted to go home that night and thought that he was going to be able to do so. He also believed that the Foreman was singling him out for mistreatment.

The Organization argues that, particularly with regard to the charges of quarrelsome and discourteous conduct, there is a range of conduct that may fall under these rules, and not all conduct that is quarrelsome or discourteous merits dismissal. The Organization argues further that the profanity used by the Claimant is common “shop talk” in the workplace and should not be considered dismissible conduct.

The Board concludes that there is substantial evidence on this record that the Claimant violated the rules for which he is charged. Not every discourteous remark or quarrelsome exchange

merits dismissal, as the Union argues. If Claimant had only used profanity in talking with his Foreman, lesser discipline might be appropriate. However, the Claimant made a remark which he admits was threatening and when asked what he meant at the time he made the comment, he failed to state to the Foreman to whom the language was directed that he only intended a more benign “threat” of reporting the Foreman to Management. Instead, he left the meaning of his threatening language hanging, saying only “you will find out.” This reasonably led the person to whom it was directed to feel threatened. In addition, the Grievant’s profanity in this case was used to emphasize his threatening language towards his Foreman and the words he used to express it, especially in his comment about how the Foreman would “fucking regret” his order for the Grievant to come to work the following day.

Under these circumstances, the Board concludes that the Carrier has provided substantial evidence of the charges against the Claimant. In addition, the Board cannot conclude that the dismissal penalty imposed by the Carrier was excessive, arbitrary or harsh. An employee who engages in angry, quarrelsome, discourteous, language with another employee, and also crosses the line into threatening language, may expect to face the ultimate consequence of dismissal, especially when they are being provided with instructions by a Foreman.

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