

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. B. Laboube, by letter dated February 14, 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 UP200KM23D/1786334 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Laboube, shall now:

‘... be allowed to return to work with all vacation and seniority rights unimpaired, that the charge and discipline, issued per letter of February 14, 2023 from Jason Rea, AVP Engineering Track Renewal & Construction South, resultant investigation held January 25, 2023, be removed from the employees 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 25, 2023 hearing, incurred that

would have normally been covered by Carrier benefits.

* * *

The Organization requests the Claimant be reinstated to his former position and placed on a Medical Leave of Absence until such time the Claimant is seen by a Doctor, diagnosed, and treated for his medical condition.

* * *

The Claimant shall be made whole for all financial losses 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."

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. Brian Laboube, entered the service of the Carrier on January 2, 2004. He has about nineteen (19) years of service and no record of discipline. Claimant had been assigned most recently to Gang 9160 as a Machine Operator (Sdag) Spiker prior to the events leading to this claim.

The Claimant was notified by letter dated January 3, 2023 that he was to appear at a formal investigation to develop facts and determine his responsibility, if any, in connection with allegations that on December 27, 2022, the Claimant allegedly failed to comply with Company policy and provide medical documents in possible violation of Rule 1.6: Conduct – Insubordinate. An investigation was held on January 25, 2023. By letter dated February 14, 2023 the Claimant was notified that the Carrier had concluded that the evidence presented at the investigation established that the charge against the Claimant had been substantiated and that he was in violation of Rule 1.6 Conduct – Insubordination. Additionally, the letter noted 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.” The Claimant was dismissed from service.

The Claimant was administered the Johnson & Johnson COVID-19 vaccine in October 2021 and states that he had a complex reaction to the vaccine. The Claimant began applying for a medical leave in November 2021 and faxed medical documents to the Carrier in order to support a medical leave. He was informed on multiple occasions thereafter that the Carrier

needed additional documentation to approve a medical leave and that he was required to provide such documentation in order to support his absence from work. Via letter dated March 3, 2022 the Claimant was notified that he had forfeited his seniority under Rule 13 by failing to return to work or receive an approved extension for a medical leave. The Claimant was granted a leniency several months later, conditioned on his agreement that he would provide all medical documentation requested by the Company's Health and Medical Services department.

The Company contends that part of the leniency granted to the Claimant in the summer of 2022 indicated that if the Claimant failed to provide the necessary documentation, the Rule 13 forfeiture of his seniority would automatically go into effect. Therefore, the Carrier argues that this is not truly a disciplinary action, but rather a self-executing forfeiture of seniority under Rule 13. Nevertheless, the Carrier notified the Claimant that he was being investigated for a Rule 1:6 Conduct – Insubordination charge, and the parties engaged in the investigation and the Carrier imposed dismissal under its MAPS discipline policy, including considering the Claimant's past disciplinary record. This claim was filed under normal procedures for challenging a dismissal issued under the MAPS policy. Under these circumstances, the Board concludes that this matter must be treated as a disciplinary matter.

The Organization argues that the Claimant's fundamental right of due process was violated when he was not permitted by the Hearing Officer to enter relevant evidence during the investigation. The Organization argues that the Hearing Officer improperly excluded from the hearing record 149 pages of relevant medical documentation that the Organization attempted to submit on behalf of the Claimant. According to the Organization, it must be allowed to submit into the record information which it believes to be relevant evidence in support of the Claimant. Here, the Organization contends, the reviewing officer was denied the opportunity to consider all the

evidence and therefore, the Claimant was deprived of a fair and impartial hearing and the claim should be sustained on this basis alone.

The Organization argues further that the Carrier preconceived judgment in connection with the Claimant's case. In fact, the Organization submits that the Carrier had already determined the Claimant's guilt when it sent the January 3, 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, the Organization contends that the essential fairness of this process was fatally compromised by the Carrier when it did not ensure that the Hearing Officer, who was in the sole position to judge credibility and make findings of fact, did not do so and did not make the ultimate disciplinary decision.

The Board concludes that the Hearing Officer's decision to exclude medical documentation submitted before December 7, 2022 was not unreasonable. The December 7, 2022 letter to the Claimant informed him that medical documentation he had submitted before that date had been insufficient to support his medical leave of absence claim. Therefore, the Hearing Officer reasonably concluded that the relevant evidence – or its absence – was any medical documentation provided by the Claimant after December 7. The Board cannot conclude that the exclusion of documents from before that period demonstrates that the investigation was fundamentally unfair or not sufficiently thorough.

In addition, the fact that the Hearing Officer did not make the ultimate discipline decision does not establish that the investigation was not fair and impartial. A Company official other than the Hearing Officer is routinely assigned to make the final decision regarding discipline or dismissal actions and this procedure has not been deemed by arbitration boards as proof of a

violation of a claimant's fundamental due process or the right to a fair hearing. The Board concludes that the procedural arguments made by the Organization do not provide grounds for sustaining this claim.

The Claimant was notified by letters dated June 27, September 19, October 4 and December 7, 2022 that the Carrier did not have the documentation needed in order to support a medical leave for the Claimant. The letter issued by the Carrier on December 7 was a final reminder that the Claimant must provide such information or he would be considered AWOL. The Claimant and his wife testified that he did not receive the December 7, 2022 letter. Letters which are sent to an employee by certified mail at the address of record provided by the employee are considered received, under longstanding precedent in the rail industry. The evidence does not demonstrate that the Claimant has argued that the December 7 letter was sent to the wrong address, and the Claimant does not deny receiving the other letters.

On this record, the Board concludes that Carrier has established by substantial evidence that the Claimant failed to comply with the Carrier's instructions to provide sufficient information to substantiate the need for a medical leave, or return to work. He was provided with multiple opportunities over the span of a year to provide such documentation and he failed to do so. Furthermore, the evidence indicates that Claimant knew that at least part of the information being sought by the Company was a projected return-to-work date, which the Claimant's wife stated that Claimant's doctor refused to provide. The Claimant had a long period of time in which to address this issue, in collaboration with the Company's Health and Medical Services department and perhaps with the assistance of the Organization. However, there is substantial evidence on this record that the Claimant failed to take such action, even after repeated notices that he had failed to provide adequate documentation. Therefore, under these circumstances, the Board cannot

conclude that the penalty of dismissal is arbitrary or harsh.

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