PUBLIC LAW BOARD NO. 7633

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
DIVISION – IBT RAIL CONFERENCE)
)
and)
)
UNION PACIFIC RAILROAD COMPANY (FORMER)
MISSOURI PACIFIC RAILROAD COMPANY))

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. J. Miller, by letter dated April 11, 2023, for an alleged violation of Rule 1.6: Conduct – Negligent and Rule 1.6: Conduct – Dishonest; and 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 employes is cause for dismissal and must be reported and 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 UP201KM23D/1789264 MPR).

2. As a consequence of the violation referred to in Part 1 above, Claimant J. Miller shall now be returned to work and:

'… be made whole for all financial loses 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 Employes 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. Miller be fully exonerated, and all notations of the dismissal be removed from all Carrier records.' (Employes' Exhibit 'A-2')."

FINDINGS

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction of the dispute herein, and that the parties to said dispute were given due notice of hearing in the matter and participated therein.

James A. Miller (the Claimant) at the time of his dismissal by the Carrier held the job of Truck Driver. By letter dated March 29, 2023, he was requested to report for a hearing on April 4, 2023, to develop the facts and determine his responsibility, if any, in connection with the following charge:

On 03/01/2023, at the location in the area of Nebraska City, NE, while employed as a Truck Oper 2 Tn, you allegedly failed to disclose your conviction of reckless driving on 3//01/2023 in Otoe County Court. You also allegedly failed to disclose that you had a pending DUI when starting your employment with UPRR that would affect your CDL and continued to drive your company vehicle during this time. This is a possible violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest
1.6: Conduct – Negligent

SSI 10-I Union Pacific Policies (Statement on Ethics and Business Conduct)

The March 29 letter further stated, "Under the MAPS Policy, this violation is a Dismissal event. Based upon your current status, if you are found to be in violation of this alleged charge, Dismissal may result."

In reply to questioning by the hearing officer, the Charging Officer, whose position is that of Manager of Track Maintenance, testified as follows. The Claimant was hired on November 4, 2022. On March 16, 2023, he received documentation from the County Court of Otoe County, Nebraska, concerning alleged vehicle violations on the part of the Claimant. On November 23, 2022, a complaint was filed against the Claimant alleging that on or about October 30, 2022, he committed a DUI offense. He pleaded not guilty to the charge. On January 11, 2023, an amended complaint was issued charging him with reckless driving on or about October 30, 2022, a Class III Misdemeanor. On March 1, 2023, he was sentenced to six months' probation and fined $500 for Reckless driving - 1st offense. The Claimant was employed on November 4th and did not disclose a pending case for DUI. Nor did he disclose that on January 11, 2023, the charge was reduced to Reckless Driving. The Complainant continued to drive a commercial vehicle for Union Pacific.

In addition, the Charging Officer's manager provided him a copy of an email dated March 15, 2023, from Union Pacific Rail Road Driver and Vehicle DOT Compliance with the subject heading James A Miller, 0517851, Driving Disqualification. It stated that the Carrier was required by the Federal Motor Carrier Safety Administration to annually request and review the Motor Vehicle Record (MVR) of their qualified drivers. After a review of the Claimant's MVR, the email stated, "UPRR DOT Compliance has disqualified this employee drivers license due to . . . an arrest for a DUI." The email continued that the Claimant was "disqualified for one year per Unsafe driver disqualification policy and will need to complete the CBT ESDDE and EAP requirements then contact UPDOT to requalify." It explained that "disqualification means that your employee cannot drive a commercial vehicle with a GVWR greater than 10,000 lbs that is company owned or rented by UPRR."

The Charging Officer testified, "This was a clear violation of the Rule 1.6 since (the Claimant) clearly demonstrated negligence by not reporting these charges. He was deceitful and dishonest as well." He read into the record the pertinent portions of Rule 1.6 prohibiting negligence and dishonesty He also read excerpts from the Statement of Ethics and Business Policy. The Claimant, the Charging Officer stated, was hired as a driver and the company would not have hired him if he had either a DUI or a Reckless Driving on his record. At no time, the Charging Officer testified, had the Claimant talked

to him about these charges. The hearing officer asked the Charging Officer, "And . . . so (the Claimant) has been driving a DOT truck from the time he was hired until you removed him from service. Is that's – correct?" He answered. "He has driven. Correct." The Hearing Officer asked the Charging Officer, "And . . . the DOT Department, . . . they disqualified him, so he would not have been allowed to drive a truck. Is that correct?" He answered, "Correct." The Charging Officer cited Rule 8.2 of The Union Pacific Railroad Drug and Alcohol Policy effective June 22, 2022, as relevant to the charges in the present matter. It set out below. The Carrier introduced into evidence a table summarizing the dates that the Claimant drove a vehicle for the company as follows: February 9, 10, 21, 23, 27, March 3, 2023.

On cross-examination by the Organization representative, the Charging Officer testified that pursuant to the Disqualification Matrix for Violations under the Carrier's Drug and Alcohol Policy it takes a second offense within a rolling three-year period to be disqualified from driving a Union Pacific truck for 60 days. The one conviction of Reckless Driving, he acknowledged, would not have affected his qualification to operate a company truck. A DUI arrest or citation in a personal vehicle, he testified, disqualifies the employee for one year from the Carrier's knowledge, he stated, but the matrix does not state that the employee can also be fired from their job.

The Organization Representative called the Charging Officer's attention to Rule 1.6.1 Motor Vehicle Driving Records which, in pertinent part, states as follows:

> **Rule: 1.6.1 Motor Vehicle Driving Records**
>
> A certified conductor, engineer, employee seeking initial certification or employees qualified to drive commercial motor vehicles must report any arrest, citation or conviction to an employee assistance representative at (800) 779-1212, within 48 hours for:
>
> - Operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance.
> - * * *

The Organization representative asked the Charging Officer, "On October 30th, 2022, with (the Claimant) not being hired yet by Union Pacific, would he fall under that criteria?" He answered, "No, sir."

The Charging Officer, in answer to the Organization representative's question, testified that on the six dates listed on the Carrier exhibit on which the Claimant drove a company truck he had a driver's license which was not revoked, and that his CDL driver's license was not suspended on any of those day. Had the Claimant disclosed that he had a pending DUI, the Charging Officer stated, he would not have been permitted to drive the truck.

In reply to additional questions from the hearing officer, the Charging Officer testified that he feels that the Claimant was dishonest negligent when he failed to provide information to him about his reckless driving conviction stemming from a DUI charge.

The Claimant gave testimony as follows in reply to questions from the hearing officer. He began his employment with the Carrier on December 5th. He was employed on the date in question as a Truck Driver, a Commercial Motor Vehicle Truck Driver. He started and ended his day in Nebraska City, Nebraska. Since his employ he has been required to take and pass examinations by CBT on rules and regulations. He does not know the date he took the rules test. He did not apply for a commercial vehicle license after being hired by the Carrier. He had one before he started. He is aware that in order to drive a Union Pacific truck he must have a DOT certification through Union Pacific. He did not have to apply for any certification. He was just told on the computer that he was certified by them. Information about rules and tests were all by computer. He was sent for a physical exam before he started driving. He was given a packet of paperwork which included the Drug and Alcohol Policy. He did not have a physical copy of the Union Pacific General Code of Operating Rules as of March 1st but they were available to him by computer. He is acquainted with the rules and policies for which he has been charged.

He takes exception [the Claimant's testimony continued] to the Charging Officer's testimony that he was negligent or dishonest. He was not dishonest. "I did not realize I had to call that number. I forgot about the number." He did provide his driving record prior to employment with Union Pacific. He did not give his Manager (the Charging Officer) the information that he had a Reckless Driving conviction but his supervisor was given that information. He provided that information to his direct supervisor. That person's title is Foreman. His charge of Reckless Driving stemmed from a DUI. It is not true that he provided the information about his Reckless Driving charge to someone who would not provide it to his Manager.

In response to questions by the Organization representative the Claimant testified as follows. He began work for Union Pacific on December 5, 2022. The Charging Officer incorrectly gave his date of hire as November 4, 2022. He notified the recruiter for Union Pacific (Carrier Recruiter) on November 7, 2022, that he had a pending DUI case. He called the Carrier Recruiter on November 4, 2022, in order to tell her about the DUI he got on October 30th, but she did not answer her phone. On March 1, 2023, he notified his direct supervisor of his Reckless Driving conviction. He felt that he was being honest and forthcoming by reporting it to his supervisor. At the time he was not aware that it would have to be reported to the company.

The hearing officer stepped in at this point and read a portion of a rule that stated that a report must be made to the supervisor who will then direct the employee to the national EAP Help Line. He asked the Claimant, "Did you call the 800-779-1212 number.?" The Claimant said that he did not. He also noted that the rule said that the supervisor will direct him to that number. He testified, "I knew (the Charging Officer) as my manager. I knew (the Foreman) as my supervisor." The hearing officer stated to the Claimant that because he did not provide information about the Reckless Driving charge which stemmed back to a DUI, the company had no knowledge of it. The Claimant replied, "I reported it to my recruiter because I wanted this job. I had a good job before I left it, and I didn't want to lost this one if I came to it."

In response to a question from the Organization representative, the Claimant stated that he was certified as a UP driver in early February. The Foreman, the Claimant testified, did not tell him that a moving violation must be reported to a Carrier official or that there was a phone number to call and report a moving violation. He had no reason, he stated, not to believe that reporting his moving violation to his front-line supervisor was the only person he had to report it to.. At no time since his date of hire with the Carrier did he feel that he was deceitful to the Carrier or attempt to hide any information pertaining to the charges listed in the Notice of Investigation.

In a closing statement the Complainant stated that on November 7, 2022, he spoke with his recruiter that he worked with through Union Pacific Railroad and informed her that he was pulled over on October 30, 2022, and received a DUI and would be going to court to try to reduce it to a Reckless Driving charge. He was concerned, he told her, that it would cause problems for him. She asked if he had lost his license or if it had been suspended. He informed her that it had not. She said that as long as he passed the background check he should be fine. On January 11, 2023, his closing statement continued, his direct-line supervisor allowed him to leave work early for his court date. When he got back from court, according to the Claimant, he told his supervisor that he pled guilty to Reckless Driving and had to go back to court on March 1, 2023, for sentencing. On March 1, the Claimant proceeded, his supervisor permitted him to leave work early at 10:00 a.m. At 1:09 p.m., he continued, he called his supervisor to find out where to meet up with him and informed him that his DUI was dropped down to Reckless Driving. He told the Claimant where to meet up. He never lost his license, and it was never suspended.

The Carrier argues that the Organization attempts to muddy the waters by stating that Claimant was issued the DUI citation 36 days prior to his hire date. The Claimant was not an employee when he was cited with a DUI, the Carrier acknowledges, but, it points out, he applied for a position that required a CDL, knowing full well, it argues, that he would not be able to perform the duties of the position he applied for with the Carrier. In addition, the Carrier asserts, it would not have hired him for the Truck Driver job if the Claimant had been forthcoming about the DUI charge. Further, the Carrier contends, when the original charge was pled down to Reckless Driving, the Claimant did not report his March 1, 2023, conviction on that charge to his supervisor, namely, his Manager (the Conducting Officer).

The Carrier notes that the Claimant's Manager did not learn of Claimant's conviction for Reckless Driving until he received the March 15, 2023, email from DOT Compliance stating that Claimant's CDL was disqualified. This, the Carrier asserts, was the basis for the Rule 1.6 Dishonest and Rule 1.6 Negligent charges against him in that "[a]t no point did the Claimant notify his manager . . . of his DUI charges/citation, court hearings, reckless driving conviction, disqualified DOT certification nor did the Claimant notify the DOT Department." The evidence, the Carrier argues, "clearly shows the Claimant was dishonest and negligent when the Claimant withheld information pertaining to his DUI charges." The charges, the Carrier contends, were supported by substantial evidence; their seriousness fully supports the discipline imposed; and the Claimant was accorded all the due process rights required under the collective bargaining agreement.

The Carrier argues that managers and supervisors depend on accurate reporting in every capacity and that it needs to be able to trust its workforce. It contends that Claimant violated that trust by failing to notify his Manager or the Department of Transportation of his DUI citation, court hearings, Reckless Driving conviction, or DOT certification disqualification. His dismissal, the Carrier maintains, was in accordance with previous Board decisions and consistent with the MAPS discipline policy. In these circumstances, the Carrier argues, it is not the Board's function to issue a different form of discipline. The claim, the Board maintains, should be denied.

The Organization argues that the dismissal must be reversed both on procedural grounds and on the merits. On procedural grounds the Organization contends that the Carrier predetermined the Claimant's guilt prior to a fair and impartial hearing. A second procedural defect in the proceeding against the Claimant, the Organization asserts, is that the disciplinary decision was made by someone other than the hearing officer. On the merits, the Organization contends that the Carrier failed to meet its burden of proof that the Claimant violated Rule 1.6: Conduct – Dishonest by failing to disclose on March 1, 2023, his conviction of reckless driving. Nor, the Organization argues, has the Carrier sustained its burden of proof that he was dishonest by failing to disclose that he had a pending DUI when starting his employment with the Carrier or by continuing to drive his company vehicle during that time. This is belied, the Organization asserts, by the evidence that on November 7, 2022, he disclosed the DUI charge to the Carrier official who recruited him and that on March 1, 2023, he immediately informed his direct supervisor of his reckless driving conviction after previously informing his supervisor in January of a pending reckless driving proceeding.

With regard to the charge that Claimant violated Rule 1.6: Conduct – Negligence, the Organization argues that the Carrier did not develop any theory of its case to show negligence on Claimant's part. Negligence, the Organization asserts, indicates failure to exercise reasonable care. The Claimant, the Organization asserts, unequivocally asserted that he took all known avenues to notify the Carrier of the citation and the conviction. The evidence, the Organization contends, shows that the Claimant acted diligently and in good faith, pursuing all the avenues he knew to be available to provide the pertinent information to the Carrier. The Carrier, the Organization maintains, has not shown otherwise and has therefore failed to meet its burden of proof.

The Board is of the opinion that the evidence does not show that Claimant was either dishonest or negligent with regard to his conduct concerning his conviction of reckless driving. The rule relied on by the Carrier requires that the conviction be reported to the employee's supervisor. The Claimant reported the conviction to his foreman. The Claimant testified that his foreman was his supervisor. The Carrier did not present any testimony challenging the idea or concept that an employee's foreman at Union Pacific is considered that employee's supervisor. There is no dispute that the rule relied on was drafted and put into effect unilaterally by the Carrier. The Claimant's understanding of the rule was a reasonable one. E. Allan Farnsworth, *Contracts* (1982) §7.11 at p. 499 states: "An especially common rule of construction is that if language supplied by one party is reasonably susceptible to two interpretations, one of which favors each party, the one that is less favorable to the party who supplied the language is preferred." That rule of construction should apply with at least as much force to rules

that are unilaterally composed by the Carrier but are binding on its workforce. The Claimant's interpretation of the rule was reasonable, and the Board is satisfied that he provided reasonable notice to the Carrier of his conviction of the offense of reckless driving.

With regard to the DUI citation, the Board is of the opinion that the Claimant did not act dishonestly in failing to notify anyone at the company of his DUI after he began his employment with Union Pacific on December 5, 2022. The applicable rules can be read as applying only to DUI arrests or citations taking place during one's employment. The Claimant can maintain that that is his understanding of the rules and that any obligation he had to disclose the DUI charge prior to his employment was fulfilled by informing the Carrier recruiter of the DUI charge when he spoke to her by phone on November 7, 2023.

However, the applicable rules in the Union Pacific Railroad Drug and Alcohol Policy can also be reasonably interpreted to require individuals employed by the Carrier as a Truck Driver and subject to the Union Pacific Department of Transportation rules and policies to report any existing DUI charges pending against them even if incurred prior to their employment by the Carrier. Rule 8.2 of the Drug and Alcohol Policy provides as follows:

> **8.2 Federal Motor Carrier Safety Administration**
>
> Any employee who holds a commercial drivers license and subject to the DOT controlled substances and alcohol testing must notify current employers of any violations. The notification must be in writing before the end of the business day following the day the employee received notice of the violation. (49 CFR § 382.415)
>
> Report within 48 hours to their supervisor any off duty arrest, conviction or completed state action for operating a personal motor vehicle while under the influence of or impaired by alcohol or a controlled substance.
>
> Reporting must be made to their supervisor who will then direct them to the National EAP Help Line, 800-779-1212. Employees that fail to make this contact will be subject to discipline, including losing an opportunity to work with EAP and maintain their employment relationship with Union Pacific.

A reasonable employee of the Carrier reading the foregoing rule who has an active DUI charge pending in court but who began his employment more than 48 hours after their DUI citation, as was the case with the Claimant when he began his employment with the Carrier on December 5, 2022, should be concerned that the rule applies to them. The fact that they may have reported the DUI to the company recruiter several weeks before their official hire should not set their minds at ease since the recruiter has no authority with respect to their supervision or management once they are hired. Nor, in the present case, did the Claimant have any reason to believe that the recruiter had reported his DUI charge to anyone else at the company.

The fact that the individual was not employed by the Carrier when the DUI event occurred does not necessarily mean that the Carrier has no interest in the event. Suppose, for example, that the DUI incident occurred the day before an individual began their employment with the Carrier. Forty-eight hours after the DUI citation would fall during the individual's employment with the Carrier. An employee who decides not to report such a DUI, on the basis that it occurred before his employment began with the company, acts at their peril and would probably be on very thin ice. This indicates that the identity of the employer at the time the DUI charge is incurred is not determinative as to when it must be reported to the Carrier but, rather, what counts is whether the DUI is still active or current.

Based on the foregoing analysis the Board is of the opinion that the Claimant was negligent in not reporting his DUI charge to the Carrier promptly after being hired. The MAPS Policy states, "An employee demonstrates negligence when his or her actions or failure to take action causes, or contributes to, the harm or risk of harm to the employee, other employees, the general public or company property." The federal statute cited in Rule 8.2 and the rule itself are premised on the belief that drivers who test positive sufficient to warrant a DUI citation are a threat to the public and must be regulated. The Claimant's failure to report his DUI citation, which was still active on his date of hire and for some time thereafter, by permitting him to evade the safeguards the Carrier puts in place when an employee incurs a DUI, at a minimum caused, or contributed to, risk of harm to the employee, the general public, and company property, within the contemplation of the federal statute and the company rule.

The Board is satisfied that the Carrier has proved by substantial evidence that the Claimant violated Rule 1.6: Conduct – Negligent. It has failed to prove that he was dishonest or that he failed to report his conviction of reckless driving to the Carrier. A mitigating element in this case is that the Notice of Investigation, in the portion dealing with the alleged failure of the Claimant to disclose his pending DUI, the Carrier added the allegation "and continued to drive your company vehicle during this time." The implication of that allegation is that he would have been prohibited from driving his vehicle had he disclosed his pending DUI. The Carrier has failed to prove that allegation by substantial evidence. This follows from the fact that the March 15, 2023, email from DOT Compliance to the Charging Officer with the subject heading James A Miller . . . Driving Disqualification included the clarification that "disqualification means that your employee cannot drive a commercial vehicle with a GVWR greater than 10,000 lbs that is company owned or rented by UPRR." No evidence was adduced regarding the GVWR of the vehicle operated by the Claimant prior to his removal from service on the present charges or that he probably would have been assigned to operate absent his DUI citation.

Nor is the failure to present proof of the weight of the vehicle operated by the Claimant a mere technicality. See, for example, PLB No. 7660, Award No. 242, at pages 3-4, where the claimant's commercial driver's license was suspended because of a DUI citation but he was allowed by the Carrier to drive a pickup truck weighing less than 10,000 pounds based on his false representation that he had a valid regular driver's license. In addition, unless some company drivers operate only vehicles weighing less than 10,000 pounds, why would DOT Compliance have made the effort to point out that the disqualification applied only to drivers of a vehicle with a GVWR greater than 10,000 pounds?

And even if it were true that all Carrier employees with the job title Truck Driver are assigned to operate vehicles with a GVWR greater than 10,000 pounds, this Board has no way of knowing that, and it was part of the Carrier's burden of proof to establish that fact if true. It did not meet that burden. In the present case there is no evidence or claim that the Claimant's regular license was invalidated or suspended. He therefore would have been fully qualified to drive a pickup truck or any other vehicle weighing less than 10,000 pounds. Without evidence in the record that the Claimant's vehicle assigned to him by the Carrier weighed more than 10,000 pounds, the Board concludes that the Carrier has failed to prove by substantial evidence that the one-year period of disqualification of the Claimant under the Carrier's unsafe driver disqualification policy would have had any effect on the Claimant's ability to operate his company vehicle. This is a strong element of mitigation in the present case.

It is the Board's determination that the record does not support the dismissal penalty that was assessed against the Claimant. The dismissal shall be set aside and the Claimant offered reinstatement to his former position without loss of seniority for his time off work and with the disqualification period imposed by the Carrier's DOT considered to have been fully served. No back pay is awarded, but reinstatement shall be with retroactive restoration of health insurance and other benefits. This being Claimant's first violation, his disciplinary status under the MAPS Policy shall be Training 1 with a 24 month retention period.

A W A R D

Claim sustained in part. 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.

/s/ Sinclair Kossoff 12/19/2025
Sinclair Kossoff, Neutral Member Date

Chris Bogenreif 1/5/2026
Chris Bogenreif, Carrier Member Date

1/5/2026
John Schlismann, Organization Member Date