

PUBLIC LAW BOARD NO. 7633  
CASE NO. 223  
AWARD NO. 223

Brotherhood of Maintenance of Way Employees  
Division - IBT Rail Conference

and

Union Pacific Railroad Company  
(former Missouri Pacific Railroad Company)

Claimant: T. Basco

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STATEMENT OF CLAIM

1. “Claim of the System Committee of the Brotherhood that: The Carrier’s discipline (dismissal) of Mr. T. Basco, by letter dated May 25, 2023, for an alleged violation of Rules 1.6 Conduct – Carelessness of Safety; 1.6 Conduct – Negligent; SSI 10-I: Union Pacific Policies; and ‘The How Matters’ Policy was exceedingly harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File UP700SN23D/1791251 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Basco shall now:
  - ‘... 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.' (Employee's Exhibit 'A-2')."

## FINDINGS

This Board derives its authority from the Railway Labor Act, as amended, together with the applicable Agreement between the parties. After reviewing the record as developed on the property, the Board finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act; that this dispute is properly before the Board; that the Board has jurisdiction over the matter; and that the parties were given due notice of the hearing thereon.

Claimant Timothy Basco entered Carrier service on August 1, 2004. At all times relevant to this proceeding, Claimant was employed as a Machine Operator (ATS) Tamper. On September 9, 2022, Claimant was involved in a collision while operating ATS 2009, when his machine struck the rear of a ballast regulator operating ahead of him on the Reisor Subdivision near Milepost 292.9.

Following the incident, the Carrier issued a Notice of Investigation charging Claimant with possible violations of Rule 1.6 Conduct – Carelessness of Safety; Rule 1.6 Conduct – Negligent; SSI Item 10-I Union Pacific Railroad Policies; and “The How Matters” Policy. A formal investigation was conducted and, by letter dated May 25, 2023, the Carrier determined that the charges were sustained and dismissed Claimant from service. The Organization appealed, and the matter was progressed to this Board for final resolution.

The Carrier contends that it met its burden of proof through Claimant's admissions, event recorder data, and testimonial evidence establishing that Claimant was distracted while operating his machine, failed to apply braking in a timely manner, and collided with another piece of on-track equipment, resulting in FRA-reportable damage exceeding \$70,000. The Carrier argues that Claimant's conduct constituted negligence and carelessness of safety under Rule 1.6 and warranted dismissal under the MAPS policy, particularly given the safety-sensitive nature of the work.

The Organization argues the incident was an accident. It maintains the Carrier failed to establish willful or reckless misconduct. It contends Claimant never exceeded the authorized speed limit, that the charged policies are vague and overbroad, and that dismissal was excessive and inconsistent with corrective discipline. The Organization stresses Claimant's long service and

lack of active disciplinary progression. It seeks full reinstatement with back pay and expungement of the discipline from his record.

After careful review of the entire record, we find the record establishes that Claimant admitted being distracted while operating the ATS tamper and that the event recorder data showed no braking for a significant distance prior to impact. Specifically, the event recorder showed braking was applied only moments before the collision. As a result, the collision was preventable. Based on the totality of the record, the Board finds that the Carrier met its burden of proving that Claimant engaged in negligent conduct and was careless of safety within the meaning of Rule 1.6.

The remaining issue is the appropriateness of the penalty. Discipline is intended to be corrective rather than punitive. While Claimant's misconduct was serious and safety-related, the record reflects that he had approximately eighteen (18) years of service at the time of the incident and was not on an active disciplinary progression.

Under these circumstances, the Board finds that permanent dismissal is excessive and he should be given a last chance. At the same time, the seriousness of the misconduct warrants a substantial disciplinary consequence and a clear warning regarding future conduct.

AWARD

The claim is sustained in part and denied in part.

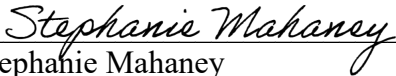
The Board finds that Claimant committed the charged misconduct. However, the discipline of dismissal is excessive under the circumstances.

Claimant shall be returned to service on a last-chance basis. Claimant shall receive no back pay or benefits for time lost. The period out of service shall count as a disciplinary suspension without pay. 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.



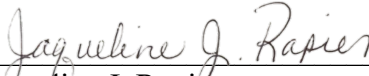
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Deborah Gaines  
Neutral Referee  
Dated: **March 2, 2026**



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Stephanie Mahaney  
Carrier Member  
Dated: March 4, 2026



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Jaqueline J. Rapiet  
Labor Member  
Dated: March 4, 2026