

**PUBLIC LAW BOARD NO. 7633**

Case No.: 40/Award No.: 40

System File No.: UP437WF143/1594356 MPR

Claimant: M. Wyrick

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UNION PACIFIC RAILWAY COMPANY )  
(Former Missouri Pacific Railroad) )  
 )  
-and- )  
 )  
BROTHERHOOD OF MAINTENANCE )  
OF WAY EMPLOYES DIVISION )  
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**Organization's Statement of Claim:**

1. The discipline (dismissal) imposed on Claimant M. Wyrick by letter dated October 21, 2013 for alleged violation of General Code of Operating Rules (GCOR) Rule 1.6 Conduct (4) Dishonesty was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP437WF13/1594356 MPR).
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall now return Claimant to service immediately and grant all other relief as contemplated under Rule 22(f).

**Facts:**

By letter dated October 2, 2013 the Claimant was directed to report on October 10, 2013 "for investigation and hearing on charges to develop the facts and place responsibility, if any, that you allegedly falsified company documents on September 24, 2013 regrading travel on December 14, 2012." The letter further indicated that if the charge was proven, it would amount to a violation of Rule 1.6 Conduct (4) Dishonesty and subject the Claimant to a possible Level 5 discipline, permanent dismissal. The letter further indicated that the claimant was being withheld from service pending the results of the investigation.

**Carrier Position:**

The Carrier has produced more than the required substantial evidence to show that the Claimant violated Rule 1.6 when he claimed that he was on duty at the time of his accident. While he acknowledged the instructions to return to Odem on December 13,

2012, he did not return until the following day. The Claimant's own definition of "on-duty" fails to make his case since his duty began at 0600 hours and the accident occurred before then. The Claimant's dishonesty broke the trust that the Carrier had placed in him and justified the discipline. The Board should not tamper with the discipline imposed, because the Carrier considered the Claimant's lengthy service and reduced the Level 5 discipline to Level 3 discipline involving a lengthy suspension.

The Claimant was provided a fair and impartial hearing within 30 calendar days of the date the Carrier became aware of the alleged falsification. Inclusion of the events of December 12 and 13 in the investigation was explained. The Carrier assumes that the Organization has abandoned objections initially made but not contained in the appeal.

**Organization Position:**

The Carrier has failed to meet the higher burden of proof required in dishonesty cases. The Claimant may have mistakenly believed that he was on duty but there is no clear and convincing evidence showing that he intentionally falsified his duty status. The discipline was excessive because it was punitive and not corrective. Furthermore, this Board has previously ruled that accidental conduct does not equate to dishonesty. The same may be said for negligence.

**Findings:**

The Contention made during the Organization's on-property appeal was not carried forward in the Organization's submission to the Board and, therefore, has not been considered. The Board notes the significant differences between the testimony of MTM Monge and the Claimant, with the former stating that the Claimant had a starting time of 0700 hours on December 14, 2012 and that the Manager had not been told that the truck the gang was told to take to the Strang Yard in Houston was in the shop. Conversely, the Claimant stated that MTM Monge was told that the truck was in the shop and that he responded that the gang should use their privately-owned vehicles and charge mileage, but not that the gang should use a different company vehicle. The Claimant also indicated that his start time on December 14, 2012 was 0600 hours. Whether the start time was 0600 or 0700 hours is irrelevant, as the Claimant's accident occurred between 0500 and 0600 hours.

Ultimately, whether MTM Monge knew the truck was in the shop is also irrelevant. And, the Board notes that Claimant's testimony that MTM Monge said to take their own vehicles is without support that might have come from other gang members. The Claimant's assertion that he believed that he was on duty because the Carrier was paying mileage for his entire trip is illogical and therefore suspect. The Carrier pays mileage for certain private vehicle trips between work locations and residences on off days, but the time spent driving or at one's residence on those trips does not qualify as on-duty time. In the final analysis, the Board finds it unnecessary to reach a determination as to whether the Claimant intentionally falsified company documents.

At a minimum, he was negligent in not assuring under the circumstances that his entries were accurate rather than based on a very speculative assumption.

In **Public Law Board 7633, Awards No. 25, 26, 27 and 29** this Board reduced permanent dismissals to time-served suspensions, finding in each case that the Carrier had failed to prove intentional falsification of company documents because the Claimants were not the ones that filled out their time sheets. They were found negligent, however, for not carefully reviewing their pay stubs and voluntarily returning their overpayments. The Carrier in this case has reduced the Claimant's Level 5 UPGRADE permanent dismissal to a Level 3 suspension, which the Board believes is a time-served suspension. The Carrier has acted consistently with the Board's adjusted discipline in the above-noted awards and the Board finds no basis for disturbing the unilateral decision to suspend rather than dismiss.

**Award:**

Claim denied.

**Order:**

The Board, after consideration of the dispute noted above, hereby orders that no award favorable to the Claimant be entered.



Andrew Mulford, Organization Member



Katherine N. Novak, Carrier Member



I. B. Helburn, Neutral Referee

Austin, Texas  
December 14, 2015