

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad
(Former Missouri Pacific Railroad)

Case No: 050
Award No: 050

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed on Claimant T. Johnson, by letter dated January 5, 2015, for alleged violation of General Code of Operating Rules (GCOR) Rule 1.6, Conduct, (4) Dishonest was without just and sufficient cause, unwarranted and in violation of the Agreement (System File CEI010215/1621230D MPR).
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall now return Claimant T. Johnson to service immediately and grant all other relief as contemplated under Rule 22(f).”

FINDINGS:

Public Law Board No. 7633, upon the whole record and all the evidence, finds the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction of the dispute herein; the parties were given due notice of hearing before this Board and they participated therein.

The Claimant was disciplined pursuant to a Notice of Investigation dated December 26, 2014, and an Investigation held on January 2, 2015 “to develop the facts and to determine your responsibility, if any, in connection with the below charge: On 12/19/2014, at the location of Dolton, IL, near Milepost 18.0, Villa Grove Subdivision, at approximately 14:00 hours, while employed as a Trk Foreman, you allegedly were dishonest when you utilized store credit for the company for your personal use. In addition, you were allegedly dishonest when questioned by company officers concerning these events. This is a possible violation of the following rule(s)

and/or policy: 1.6: Conduct - Dishonest; 1.6: Conduct - Immoral. 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 employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated. . . .”

In a discipline letter dated January 5, 2015, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: On 12/19/2014, at approximately 14:00 while employed as a Trk Foreman, you were dishonest when you utilized store credit for the company for your personal use. In addition, you were allegedly dishonest when questioned by company officers concerning these events. This is a violation of the following rule(s) and/or policy: 1.6: Conduct - Dishonest; 1.6: Conduct - Immoral. 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 employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated. You will be assessed a Level 5 pursuant to the Union Pacific Railroad UPGRADE Discipline Policy. The discipline assessment of Level 5, under the Carrier's Upgrade Discipline Policy, results in permanent dismissal. Effective immediately, you are hereby dismissed from all service with the Union Pacific Railroad.”

The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties' respective positions, whether or not specifically addressed herein.

The Board finds the Organization's procedural objections unpersuasive: The inconvenience of the change of Investigation venue from Dolton, IL to Northlake, IL was not shown to constitute a hardship, or to violate Agreement Rule 22(2); the presence of an armed Carrier Special Agent as a silent observer was not shown to violate the Agreement or detract from a fair and impartial hearing; the Organization did not show that the Carrier violated its Disciplinary Policy for Level 5 Offenses regarding Regional Vice President consultation; this Board has previously “conclude[d] that Rule 22 is not intended and cannot be read to include investigations

by Corporate Audit. Therefore the Claimant was not authorized a duly accredited representative when questioned by Corporate Audit.” *See*, Public Law Board No. 7633, Award No. 45. The Investigation was not untimely under Rule 22(a)(1), because the Carrier determined it had sufficient cause to charge Claimant based upon his answers on December 19, 2014, not October 30, 2014. *See*, Public Law Board No. 7633, Award No. 45.

Turning to the merits of the claim, during a Corporate Audit interview conducted by telephone on October 30, 2014, Claimant denied obtaining or knowing anything about Home Depot gift cards in connection with transactions he made using his Carrier-issued Visa card. Claimant explicitly stated this denial at least eight (8) times during the interview. At the start of the interview Claimant was informed the call was being recorded, and that dishonesty during the interview could be grounds for termination. During a Corporate Audit interview conducted by telephone on December 19, 2014, Claimant admitted his denials on October 30, 2014 were false. Substantial evidence in the record demonstrates that Claimant’s October 30, 2014 false denials were intentional, and not the result of misunderstanding what he was being asked by Corporate Audit. The Board notes Claimant used the gift cards at Home Depot for his personal-use purchase on September 3, 2014 – less than two (2) months before his October 30, 2014 false answers to Corporate Audit.

The General Code of Operating Rules (“GCOR”) defines “Dishonesty” as: “When an employee’s actions or statements constitute lying, cheating or deception.” Violation of this rule (GCOR 1.6), “is cause for dismissal.” On December 19, 2014 Claimant admitted to receiving store credit for Carrier-issued Visa card purchases, and using same for his personal use, and to giving deceptive answers about same on October 30, 2014. The Organization argues the Home Depot receipts in evidence are confusing. The Board finds the receipts are self-explanatory, not confusing.

The Visa Purchasing Card Policy “Responsibilities” section states, in pertinent part: “Employees will be held accountable for all transactions incurred on their Visa Purchasing card” and mandates that employees, “Use the card only for business-related purchases, . . .” Substantial evidence in the record demonstrates that Claimant used the Carrier-issued Visa card to purchase gift cards, which he later used for personal, non-Carrier-business purchases, without the


knowledge, permission or authority of the Carrier. The “Compliance” section states: “The Company may impose appropriate discipline for violations up to an including summary dismissal ...”

Additionally, as the Audit Department noted, on one occasion (June 12, 2014), Claimant’s misconduct cost the Carrier additional money. This is because at 12:59 PM Claimant used his Carrier-issued Visa card to purchase a bucket of blacktop patch (for legitimate Carrier business purposes) at Home Depot at the regular price of \$150.95. He then returned it at 1:07 PM for a full refund (allegedly because of a “mix-up” by the cashier in not applying a discount), and he then re-purchased it at 1:08 PM. When re-purchased, instead of the charge for the product being reduced by the discount, the discount savings were added to the total cost charged to the Carrier’s Visa card, in the form of a \$17.28 Home Depot gift card. The Carrier’s Visa card was charged \$168.23: \$150.95 for the blacktop patch, plus \$17.28 for a Home Depot gift card. The Carrier thus paid \$168.23 for a \$150.95 bucket of blacktop patch. Claimant admitted he used this \$17.28 Home Depot gift card, obtained at Carrier expense (and two other Home Depot gift cards obtained in other Carrier-issued Visa card transactions) to make an admittedly personal-use purchase at a Home Depot near his residence, on September 3, 2014.

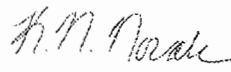
There is substantial evidence in the record to uphold the Carrier’s discipline determination. The Organization’s defenses are not persuasive. The Board is not unmindful of Claimant’s 11 years of service with just one (1) prior disciplinary matter (an operational violation resulting in a five (5) day suspension). However, the Board defers to the Carrier’s decision that Claimant’s dishonesty has broken the essential bond of trust in the employer-employee relationship. Therefore, the discipline assessed by the Carrier was not arbitrary, capricious, or an abuse of discretion under the facts and circumstances of this record, and will not be disturbed by this Board.

AWARD:

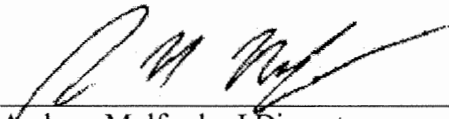
Claim denied.



Robert Grey
Neutral Member
Dated: 10/20/17



Katherine N. Novak
Carrier Member
Dated: 10/20/17



Andrew Mulford – I Dissent
Labor Member
Dated: 10/20/17