

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad
(Former Missouri Pacific Railroad)

Case No: 051
Award No: 051

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed on Mr. C. Peabody by letter dated February 12, 2015 for alleged violation of GCOR 1.6: Conduct - Careless of the safety of themselves; 1.6: Conduct - Negligent; Fire Prevention Plan Rule 2 - Job Briefing; Fire Prevention Plan Rule 5 Preventative Measures; Fire Prevention Plan Rule 5.5.2 When Risk is Moderate; and Fire Prevention Plan Rule 5.5.3 - When Risk is High was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP300LF15/1624954D MPR).
2. As a consequence of the Carrier’s violation referred to in Part 1 above, Claimant C. Peabody must now be immediately reinstated to service with full seniority unimpaired and made whole for all lost wages and benefits resulting from his improper termination as well as all other remedies prescribed by 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 January 21, 2015, and an Investigation held on February 3, 2015 “to develop the facts and determine your responsibility, if any, in connection with the below charge: On 01/16/2015, at the location of

Lancaster, KS, near Milepost 341.53, Fall City Subdivision, while employed as a M/O (Tlh) Back Hoe, you allegedly were negligent by failing to follow proper fire prevention guidelines while working, resulting in a right of way fire causing extensive property damage and loss to an adjacent land and home owner. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct - Careless of the safety of themselves; 1.6: Conduct – Negligent; Fire Prevention Plan Rule 2 - Job Briefing; Fire Prevention Plan Rule 5 Preventative Measures; Fire Prevention Plan Rule 5.5.2 When Risk is Moderate; Fire Prevention Plan Rule 5.5.3 - When Risk is High. 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 February 12, 2015, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: On 01/16/2015, while employed as a MO (Tlh) Back Hoe, you were negligent by failing to follow proper fire prevention guidelines while working, resulting in a right of way fire causing extensive property damage and loss to an adjacent land and home owner. This is a violation of the following rule(s) and/or policy: 1.6: Conduct - Careless of the safety of themselves; 1.6: Conduct - Negligent; Fire Prevention Plan Rule 2 - Job Briefing; Fire Prevention Plan Rule 5 Preventative Measures; Fire Prevention Plan Rule 5.5.2 When Risk is Moderate; Fire Prevention Plan Rule 5.5.3 - When Risk is High. 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.

There is substantial evidence in the record to uphold the Carrier's determination of culpability. However, the mitigating factors proven by the Organization persuade the Board that termination is excessive under the facts and circumstances of this record.

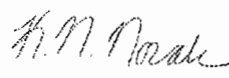
The Board stresses that the mitigating circumstances proven in the record do not outweigh the critical importance of conducting a Fire Risk Assessment -- and doing so properly. Had Claimant done so, the Carrier would not have been liable for the burning of approximately 40 acres.

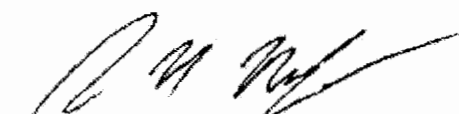
Claimant is reinstated to service with full seniority unimpaired, but without back pay or benefits.

AWARD:

Claim sustained in accordance with the Findings.



Robert Grey
Neutral Member
Dated: 10/20/17

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

Andrew Mulford
Labor Member
Dated: 10/20/17