

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT Rail Conference

and

Union Pacific Railroad Company
(Former Missouri Pacific Railroad Company)

Case No: 056
Award No: 056

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissed from the service of the Union Pacific Railroad Company) of Mr. V. Chapman by letter dated August 20, 2015 for the alleged violation of Rule 1.6: Conduct - Careless of the safety of themselves, Rule 1.6: Conduct - Negligent, Rule 136.7.4: Safe Working Distance Between Machines and Rule 1.13: Reporting and Complying with Instructions was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP998PA15/1635223D MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant V. Chapman shall be allowed to return to work with all vacation and seniority rights unimpaired, that the charges and discipline be removed from his personal record and that he be compensated for any lost time including overtime, per/diem and mileage as well as all other expenses incurred.”

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 July 28, 2015, Investigation held August 11, 2015, “to develop the facts and determine your responsibility, if any, in connection with the below charge: On 07/13/2015, at the location. of Gessner, TX, near Milepost

278.8, Laredo Subdivision, at approximately 13:30 hours, while employed as a Track Machine Operator, you allegedly failed to operate your machine in a safe manner. In addition, you allegedly failed to follow the working distance as prescribed in the Operation of On-Track Equipment JSA. 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; 136.7.4 : Safe Working Distance Between Machines; 1.13 : Reporting and Complying with Instructions. 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. A review of your previous discipline history indicates that your current discipline status is a Level 0. The proposed discipline for the charges contained herein may result in a Level 5 pursuant to the Union Pacific Railroad Discipline Upgrade Policy. If you are found to be in violation of this alleged charge, the discipline assessment may be a Level 5. Under the Carrier's Upgrade Discipline Policy, Level 5 may result in permanent dismissal.”

In a discipline letter dated August 20, 2015, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: On 07/13/2015, at approximately 13:30 while employed as a Track Machine Operator, you failed to operate your machine in a safe manner. In addition, you failed to follow the working distance as prescribed in the Operation of On-Track Equipment JSA. 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; 136.7.4: Safe Working Distance Between Machines; 1.13 : Reporting and Complying with Instructions. 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's 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.”

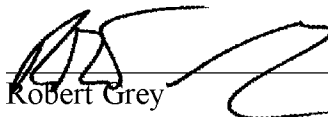
The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now

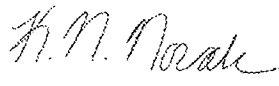
before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties' respective positions, whether or not specifically addressed herein.

After review of all arguments made, the Board determines to decide this case solely on the merits. There is substantial evidence in the record to uphold the Carrier's discipline determination: Claimant admitted that he violated the 150-foot rule. The Board finds the violation was proven by the Carrier and shown to be serious. In light of the entire record, including Claimant's 18 years of unblemished service, except for one incident in 1997, the Board concludes that the dismissal should be modified to a long-term suspension. Claimant is reinstated to service with full seniority unimpaired, but without back pay.

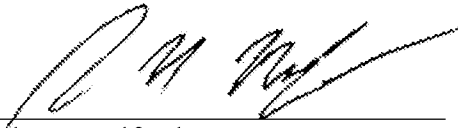
AWARD:

Claim sustained in accordance with the Findings.


Robert Grey
Neutral Member
Dated: March 20, 2018



Katherine Novak
Carrier Member



Andrew Mulford
Labor Member