

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: 58  
Award No: 58

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. P. Garrett by letter dated September 29, 2015 for the alleged violation of GCOR 1.6 Conduct: Careless, GCOR 1.6 Conduct: Negligent, GCOR 4.1: Not conducting/documenting a fire risk assessment prior to hot work being conducted, GCOR 5.5.3: Not complying with arc welding, grinding, cutting or using a torch requirements when fire risk is high and GCOR 101.13.4: Operating Abrasive Tools was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP534JF15/1638147D MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant P. Garrett shall be returned to service, have the Level five (5) discipline removed from his record, be provided all seniority and benefits unimpaired, compensated for all lost time including overtime, per/diem and mileage and be reimbursed for all additional 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 August 27, 2015, and an Investigation held on August 31, 2015 “to develop the facts and determine your

responsibility, if any, in connection with the below charge: On 08/18/2015, at the location of Liverpool, TX, near Milepost 331.19, Angleton Subdivision, at approximately 13:15 hours, while employed as a Welder Helper, you allegedly were careless of safety of yourself and the public and demonstrated a willful disregard and negligence when you failed to properly complete your fire risk assessment and have the proper shield guard on your equipment. This is a possible violation of the following rules and/or policy: 1.6 : Conduct - Careless of the safety of themselves 1.6 : Conduct - Negligent 4.1 : Not conducting/documenting a fire risk assessment prior to hot work being conducted 101.13.4 : Operating Abrasive Tools 5.5.3 : Not complying with arc welding, grinding, cutting or using a torch requirements when fire 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 September 29, 2015, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: On 08/18/2015, while employed as a Welder, you were careless of safety of yourself and the public and demonstrated a willful disregard and negligence when you failed to properly complete your fire risk assessment and have the proper shield guard on your equipment. This is a violation of the following rule(s) and/or policy: 1.6 : Conduct - Careless 1.6 : Conduct - Negligent 4.1 : Not conducting/documenting a fire risk assessment prior to hot work being conducted 5.5.3 : Not complying with arc welding, grinding, cutting or using a torch requirement when fire risk is high 101.13.4 : Operating Abrasive Tools. 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. Based on your current record, 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 a number of acres.

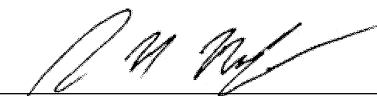
Claimant is reinstated to service with full seniority unimpaired, but without back pay or benefits.

AWARD:

Claim sustained in accordance with the Findings.

  
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Robert Grey  
Neutral Member  
Dated: 12/14/2017

  
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Katherine Novak  
Carrier Member  
Dated: 12/14/2017

  
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Andrew Mulford  
Labor Member  
Dated: 12/14/17