

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: 060
Award No: 060

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal from the service of the Union Pacific Railroad Company) of Mr. T. Bonton by letter dated October 6, 2015 for the alleged violation of General Code of Operating Rule (GCOR) 1.6 Conduct - Dishonest and GCOR Rule 1.13: Reporting and Complying with Instructions was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP539JF15/1640236D MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Bonton 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 21, 2015, Investigation held September 16, 2015, “to develop the facts and determine your responsibility, if any, concerning the charge that you allegedly were dishonest when you entered time that you did not work for the time period January 1, 2015 to July 22, 2015. Additionally, you failed to comply

with Instructions and/or policies regarding how you entered your time for the time period January 1, 2015 to July 22, 2015. First date of knowledge regarding this incident was received on August 9, 2015. These allegations, if substantiated, would constitute a violation of Rule 1.13 Reporting and Complying with Instructions, Rule 1.6 (4) Conduct (Dishonest), and the part that reads, "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," as contained in the General Code of Operating Rules, effective April 1, 2015. Please be advised that if you are found to be in violation of one or more of the alleged charges that the discipline assessment may be a Level 5 and may result in permanent dismissal. You are being withheld from service pending the results of this investigation and hearing."

In a discipline letter dated October 6, 2015, the Carrier found that "the evidence more than substantially supports the charges against you. The following charge has been sustained: You were dishonest when you entered time that you did not work for the time period January 1, 2015 to July 22, 2015. Additionally, you failed to comply with instructions and/or policies regarding how you entered your time for the time period January 1, 2015 to July 22, 2015. First date of knowledge regarding this incident was received on August 9, 2015. Rule 1.6: Conduct - Dishonest; Rule 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. 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. The Organization argues that the Carrier failed to comply with the Rule 22(e) disciplinary decision time limit. Rule

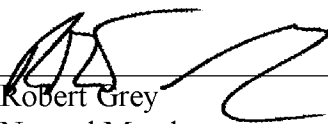
22(e) requires the Carrier to “make every effort to render such decision within twenty (20) calendar days following the date the investigation is concluded.” The Investigation took place on September 16, 2015. The Carrier “rendered” its decision on October 6, 2015, which is within twenty (20) calendar days, thus satisfying the time requirement of Rule 22(e). The Board notes that also on October 6th, the Carrier mailed the decision via US Postal Service 2-day Priority Mail.

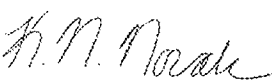
Turning to the merits, the Carrier argues it has the right to rely upon employees being honest and accurate in their reporting of number of hours worked *and* rates of pay for those hours, even when the hours worked involve long hours, and/or rest days, and/or span midnight. The Board agrees. In this case, Claimant accurately reported number of hours worked, but not rates of pay, for a substantial number of those hours. This resulted in Claimant receiving more pay than he was actually entitled to.

The Board has searched the record and finds substantial evidence of negligence on the part of Claimant, but not substantial evidence of dishonesty. In light of the facts and circumstances of the record, 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.

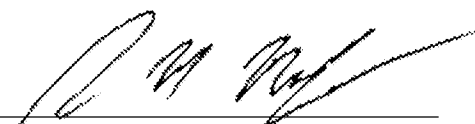
AWARD:

Claim sustained in accordance with the Findings.


Robert Grey
Neutral Member
Dated: March 20, 2018



Katherine Novak
Carrier Member



Andrew Mulford
Labor Member