

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: 64  
Award No: 64

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed on Mr. V. Nambo by letter dated October 19, 2015 for alleged violation of GCOR 1.6: Conduct - Careless of Safety in connection with charges that he failed to provide proper radio communication to contractors resulting in contractor vehicle collision, personal injury and potential injury to Union Pacific Company employees on September 6, 2015 was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP541JF15/1641781D MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant V. Nambo 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 September 10, 2015, and an Investigation held on October 8, 2015 (after two (2) postponements) “to develop the facts and place responsibility, if any, while employed as Welder Helper on Gang 9254, at San

Marcus, Texas, near Milepost 215.5, at approximately 1158 hours, on September 6, 2015, you allegedly failed to provide proper radio communication to contractors resulting in contractor vehicle collision, personal injury and potential injury to Union Pacific Company employees. These allegations, if substantiated, would constitute a violation of Rule 1.6 Conduct (1) Careless of Safety, 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."

In a discipline letter dated October 19, 2015, the Carrier found that "the evidence more than substantially supports the charges against you. The following charge has been sustained: While employed as Welder Helper on Gang 9254, at San Marcos, Texas, near Milepost 215.5, at approximately 1158 hours, on September 6, 2015, you failed to provide proper radio communication to contractors resulting in contractor vehicle collision, personal injury and potential injury to Union Pacific Company employees. This is found to be in violation of the following rule(s) and/or policy: 1.6: Conduct - Careless of Safety. 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.



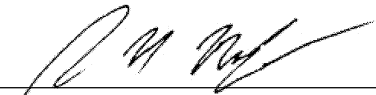
The Board finds the Organization's procedural objections unpersuasive.

There is not substantial evidence in the record to uphold the Carrier's determination of culpability. Claimant had no control over the actions of the contractor-operator of the contractor

vehicle, when it reversed into the other contractor-operated contractor vehicle, independently of Claimant.

AWARD:

Claim sustained.

  
\_\_\_\_\_  
Robert Grey  
Neutral Member  
Dated: 12/14/17  
\_\_\_\_\_  
Katherine Novak  
Carrier Member  
Dated: 12/14/17  
\_\_\_\_\_  
Andrew Mulford  
Labor Member  
Dated: 12/14/17