

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: 065
Award No: 065

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed on Mr. W. Baron, by letter dated December 7, 2015, for alleged violation of General Code of Operating Rules (GCOR) Rule 1.6: Conduct - Quarrelsome and GCOR Rule 1.6: Conduct - Discourteous was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP908PA15/1646928 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant W. Baron 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 due to discipline issued in connection with these charges and that he be reimbursed for and additional expenses incurred that would have normally been covered by the Carrier benefits.”

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.

Claimant, who entered service on May 11, 2015, was disciplined pursuant to a Notice of Investigation dated November 13, 2015, Investigation held November 19, 2015, “to develop the facts and determine your responsibility, if any, in connection with the below charge: On

11/04/2015, at the location of Spring, TX, near Milepost 211, Palestine Subdivision, at approximately 15:50 hours, while employed as a Truck Operator, you allegedly sent voicemails and texts to MTM David Gitlitz and his work group that were discourteous and quarrelsome. This is a possible violation of the following rule(s) and/or policy: This is a possible violation of the following rule(s) and/or Policy: 1.6: Conduct Quarrelsome; 1.6: Discourteous. 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. Under the MAPS Policy, this violation is a Dismissal event. Based upon your current status, if you are found to be in violation of this alleged charge, Dismissal may result.”

In a discipline letter dated December 7, 2015, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: On 11/04/2015, at the location of Spring, TX, near Milepost 211, Palestine Subdivision, at approximately 15:50 hours, while employed as a Truck Operator, you sent voicemails and texts to MTM David Gitlitz and his work group that were discourteous and quarrelsome. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct - Quarrelsome; 1.6: Conduct - Discourteous. 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.

Claimant admitted sending the following communications, each of which is in the record:

- On a date between September 29, 2015 and October 2, 2015 (exact date not in the record), Claimant left a voicemail message for MTM Gitlitz, stating in pertinent part: *“Don’t be a coward and not answer my phone little man. . . . You’re sitting in my chair. You are in my office. . . . **my goal in life is to make sure you’re not there. That is my goal in life.** . . .”* [Emphasis added].
- On October 2, 2015 Claimant sent a text message to MTM Gitlitz, stating in pertinent part: *“You know damn well that we agreed that I could look elsewhere and bid off. . I’m not some livestock you own!! You need ‘front line supervisor course’ something bad! I promise you wouldn’t talk to me the way you talk to Ryan and whoever else.”*
- On November 4, 2015 Claimant sent a text message to MTM Gitlitz, stating in pertinent part: *“Your sitting in my chair! Your sitting in my office!! And **I have the resources Your history Little man**”* [Emphasis added].
- On November 4, 2015 Claimant sent a group text message to other employees working under MTM Gitlitz, including new hires and some with two or more years working under MTM Gitlitz: *“Gentlemen: I caution all of you who are under the so called supervision of David Gitlitz! This man has no character! He has no morals or scruples. **His days are numbered.** Do not trust anything he promises, he went against what he said to me. For those who are confused, this is not a terroristic threat towards david Gitlitz. It’s my observation of a failure in a person holding a supervisor position. David Gitlitz is a failed leader. UP should part ways with this person soon as possible.”* [Emphasis added].

Claimant testified at the Investigation that he sent these communications out of aggravation and frustration, because he felt let down, betrayed and misled by MTM Gitlitz. Claimant believed that MTM Gitlitz was dishonest, intentionally giving Claimant bad advice about bidding for a truck operator position in Oklahoma that Claimant was interested in.

The Organization argues that: *“First and foremost, the record reflects the Carrier materially overplays the conduct of the Claimant. . . . the text messages were in no way threatening to MTM Gitlitz but rather communicating Claimant's observations of MTM Gitlitz's leadership qualities and abilities. Considering Claimant was given bad career advice from MTM Gitlitz regarding his instruction to Claimant to not accept a better paying truck driver position to which the Claimant could have established seniority rights, it is understandable that Claimant would be frustrated and not communicate effectively with MTM Gitlitz in this instance. Second, the Board must take into account all factors and elements impacting Claimant during the time frame at issue here. During the time period involved, Claimant had made numerous attempts to bid to and obtain a better position than the track laborer position he was assigned and working at the time. He was obviously disheartened when he learned from his fellow employees that had he not taken MTM Gitlitz's advice and rather accepted the truck driver position, he could have secured and established seniority rights as a truck driver which would have provided him with additional and better paying work opportunities on the railroad. It is apparent that in sending the voice mails and text message to MTM Gitlitz and the work group, his nerves may have made him speak in an off color manner, but Claimant did not engage in any behavior which constituted quarrelsome or discourteous conduct. A complete review of Claimant's testimony at the investigation clearly supports this point.”*

The Board finds that the record contains substantial evidence that Claimant was discourteous, quarrelsome and hostile. The Board notes that Claimant's conduct caused MTM Gitlitz to reasonably think that Claimant “was gonna go postal or something.” Transcript p. 17.

Even assuming, *arguendo*, that MTM Gitlitz was dishonest with Claimant, and intentionally gave Claimant bad advice, the record supports the Carrier's position that same would not provide a sufficient basis to justify Claimant's proven egregious misconduct in response thereto, and that the employment relationship can no longer be maintained -- especially when committed by an employee with less than six (6) months of service.

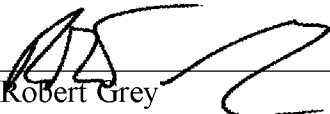
The record does not support the Organization's position that “Claimant believed that he was acting appropriately and in line with the expectations of the Carrier. As such, the imposition of an outright dismissal was arbitrary and unwarranted.” The Organization cites no policy, rule,

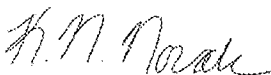
training or competent authority which in any way establishes that the communications sent by Claimant were “appropriate” and “in line with the expectations of the Carrier.”

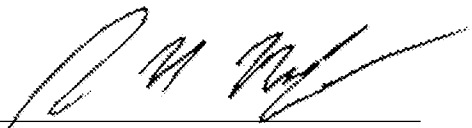
There is substantial evidence in the record to uphold the Carrier’s discipline determination. The Organization’s defenses are not persuasive. The discipline assessed by the Carrier was not arbitrary, capricious, or an abuse of discretion under the facts and circumstances of this record, and will therefore not be disturbed by this Board.

AWARD:

Claim denied.


Robert Grey
Neutral Member
Dated: March 20, 2018


Katherine Novak
Carrier Member


Andrew Mulford
Labor Member