

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance  
of Way Employes Division – IBT Rail Conference

and

Union Pacific Railroad Company  
(Former Missouri Pacific Railroad Company)

Case No: 66  
Award No: 66

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. C. Lopez by letter dated January 4, 2016 for the alleged violation of General Code of Operating Rules (GCOR) 1.6: Conduct - Careless, GCOR 1.6; Conduct - Negligent and GCOR 136.8.2: Responsibilities of the Roadway Worker was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP914PA16/1650604 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Lopez shall be allowed to return to work with all vacation and seniority rights unimpaired, the charges and discipline be removed from his personal record and he be compensated for any lost time including overtime, per/diem and mileage and that he be reimbursed for any additional expenses incurred that would have been covered by the Carrier.”

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 December 15, 2015, and an Investigation held on December 21, 2015 “to develop the facts and determine your

responsibility, if any, in connection with the below charge: On 12/02/2015, at the location of Austin Main 1, near Milepost 227.6, at approximately 09:30 hours, while employed as a Bb Carpenter, you allegedly were careless to safety and negligent when you occupied the Austin #1 Main without proper authority.” These allegations, if substantiated, would constitute a violation of Rule 1.6(1)(2): Conduct (Careless of the safety of themselves or others; Negligent) and 136.8.2: Responsibilities of the Roadway Worker. The language of the cited rules, in relevant part, is as follows: 1.6: Conduct Employees must not be: 1. Careless of the safety of themselves or others 2. Negligent 3. Insubordinate 4. Dishonest 5. Immoral 6. Quarrelsome or 7. Discourteous 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 January 4, 2016, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: On 12/02/2015, while employed as a Bb Carpenter, you were careless to safety and negligent when you occupied the Austin #1 Main without proper authority This is a violation of the following rule(s) and/or policy: 1.6 : Conduct - Careless 1.6 : Conduct - Negligent 136.8.2 : Responsibilities of the Roadway Worker Additionally, Rule 1.6 : Conduct stipulates that any act of hostility, misconduct, or willful disregard or Rule 1.6: Conduct 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.

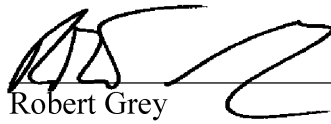

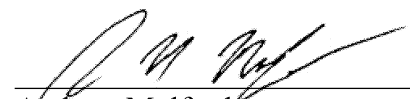
There is substantial evidence in the record to uphold the Carrier's determination of culpability. The record reflects that the tracks involved were clearly and properly marked, such that Claimant had sufficient notice to know where to properly setup. However, the mitigating factors proven by the Organization 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 – life and death – importance of employees being cognizant at all times of what track they are on, and, being on the track they are supposed to be on.

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: 12/14/17  
\_\_\_\_\_  
Katherine Novak  
Carrier Member  
Dated: 12/14/2017  
\_\_\_\_\_  
Andrew Mulford  
Labor Member  
Dated: 12/14/17