

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: 076  
Award No: 076

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. Y. Lamb, by letter dated February 11, 2016, for the alleged refusal of a FMCSA Pre-Employment test on October 23, 2015 was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP402RR16/1652888 MPR)
2. As a consequence of the violation referred to in Part 1 above, Claimant Y. Lamb shall ‘\*\*\* be reinstated immediately to his former position and working status with all seniority and vacation unimpaired and that he be compensated for all time lost including straight time and any overtime per diem and any other expenses that he might have incurred during his termination due to this discipline that the Carrier issued.’ (Employees’ Exhibit ‘A-2’).”

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 November 20, 2015, and an Investigation held on January 26, 2016, “for investigation and hearing on charges that you allegedly refused a FMCSA Pre-Employment test. The test would have been administered in accordance with Union Pacific Railroad (UPRR) Drug and Alcohol Policy on October 23, 2015. If proven, this would be in violation of the UPRR Drug and Alcohol Policy and General Code of

Operating Rules (Rule 1.6). According to the UPRR Upgrade Policy, the proposed discipline for this offense is a Level 5. . . .”

In a discipline letter dated February 11, 2016, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: You refused a FMCSA Pre-Employment test. The test would have been administered in accordance with Union Pacific Railroad (UPRR) Drug and Alcohol Policy on October 23, 2015. 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.

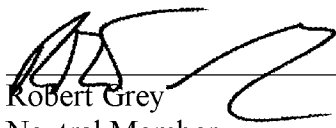
There is substantial evidence in the record to uphold the Carrier’s determination of culpability. However, the mitigating factors proven by the Organization persuade the Board that termination is excessive under the facts and circumstances of this record. The Board takes no exception to the Carrier’s application of the Drug and Alcohol Policy in this matter. However, the Board notes that this was a voluntary examination at Claimant’s own request, undertaken while Claimant was off duty. The Board also notes Claimant’s 18 years of employment by the Carrier, with no relevant disciplinary record.

The Board emphasizes that as this test was under FMCSA protocols, any requirements thereunder are not, and will not, be affected by this Award.

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


AWARD:

Claim sustained in accordance with the Findings.



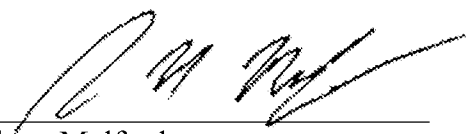
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Robert Grey  
Neutral Member  
Dated: March 20, 2018



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Katherine Novak  
Carrier Member



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Andrew Mulford  
Labor Member