

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad
(Former Missouri Pacific Railroad)

Case No. 79
Award No. 79

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s dismissal of Mr. A. Nichols, by letter dated March 29, 2016, for the alleged careless, negligent, insubordinate, dishonest conduct as well as failure to properly report and comply with instructions on February 25, 2016 was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP703SN16D/1660327D MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Nichols shall be afforded all relief contemplated by Rule 22.”

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 February 29, 2016, Investigation held March 9, 2016, “to develop the facts and determine your responsibility, if any, in connection with the below charge: On 02/25/2016, at the location of Stephens, AR, near Milepost 358.0, Pine Bluff Subdivision, at approximately 09:30 hours, while employed as a Trk Asst Fmn, you allegedly were told to keep your equipment in the siding at Stephens until further notice from the supervisor. At approximately 10:29, you told your operators to travel onto

the main, even though you had not received permission from the supervisor, as previously instructed, risking the safety of the men and equipment involved. You also checked in with the EIC, however you were unable to be reached for several hours by radio or phone, causing an overstay and unnecessary delay to the clearing of trains. This is a possible violation of the following rule(s) and/or policy: 1.6 : Conduct - Careless; 1.6 : Conduct - Negligent; 1.6 : Conduct - Insubordinate; 1.6 : Conduct - Dishonest; 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. 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 March 29, 2016, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: On 02/25/2016, while employed as a Trk Asst Fmn, you were told to keep your equipment in the siding at Stephens until further notice from the supervisor. At approximately 10:29, you told your operators to travel onto the main, even though you had not received permission from the supervisor, as previously instructed, risking the safety of the men and equipment involved. You also checked in with the EIC, however you were unable to be reached for several hours by radio or phone, causing an overstay and unnecessary delay to the clearing of trains. This is a violation of the following rule(s) and/or policy: 1.6 : Conduct - Careless; 1.6 : Conduct - Negligent; 1.6 : Conduct - Insubordinate; 1.6 : Conduct - Dishonest; 1.13 : Reporting and Complying with Instructions. 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.

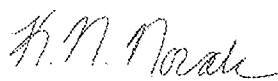
There is substantial evidence in the record to uphold the Carrier's discipline determination. The Organization's defenses are not persuasive. The Board notes that Claimant chose to disregard instructions from supervisors, and disregard dire concerns from crew members. Instead, Claimant instructed crew members onto mainline track, when literally *one (1) minute later* the crew members would have been on the mainline track without track time or track authority.

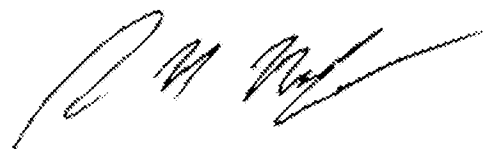
The discipline assessed by the Carrier was not arbitrary, capricious, or an abuse of discretion under the facts and circumstances of this record, and will therefore not be disturbed by this Board.

AWARD:

Claim denied.


Robert Grey
Neutral Member
Dated: May 11, 2018


Katheirne Novak
Carrier Member


Andrew Mulford
Labor Member