

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad
(Former Missouri Pacific Railroad)

Case No. 86
Award No. 86

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed on Mr. L. Gipson, by letter dated November 29, 2016, for alleged violation of GCOR 1.6: Conduct - Quarrelsome, Rule 1.6: Conduct - Discourteous, Policy against Violence and Abusive Behavior in the Workplace and Rule 1.13: Reporting and Complying with Instructions in connection with charges that while working as a trackman on November 2, 2016, Claimant was discourteous and quarrelsome while engaged in a confrontation with another employee was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP601BT17/1678456 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant L. Gipson 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 November 9, 2016, Investigation held November 18, 2016, “to develop the facts and determine your

responsibility, if any, in connection with the below charge: While working as Trackman on November 2, 2016, you allegedly were discourteous and quarrelsome when you engaged in a confrontation with another employee. Your alleged actions, if proven, indicate a possible violation of the following rules and/or policies: Rule 1.6: Conduct – Quarrelsome; Rule 1.6: Conduct – Discourteous; Violence and Abusive Behavior in the Workplace Policy; Rule 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 November 29, 2016, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: While working as Trackman on November 2, 2016, you were discourteous and quarrelsome when you engaged in a confrontation with another employee. Your actions indicate a violation of the following rules and/or policies: Rule 1.6: Conduct – Quarrelsome; Rule 1.6: Conduct – Discourteous; Violence and Abusive Behavior in the Workplace Policy; Rule 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 engaged in this discourteous and quarrelsome conduct while on probation for a similar incident.

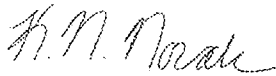
The discipline assessed by the Carrier was not arbitrary, capricious, or an abuse of discretion under the facts and circumstances of this record, and will therefore not be disturbed by this Board.

AWARD:

Claim denied.



Robert Grey
Neutral Member
Dated: May 11, 2018



Katheirne Novak
Carrier Member



Andrew Mulford
Labor Member