

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad  
(Former Missouri Pacific Railroad)

Case No. 87  
Award No. 87

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Fierro, by letter dated November 30, 2016, for the alleged violation of General Conduct of Operating Rules (GCOR) 1.6: Conduct - Negligent, 1.6: Conduct - Dishonest, 1.13: reporting and Complying with Instructions and 74.5: Seat Belts was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP523JF16/1677271D MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Fierro 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 October 27, 2016, Investigation held November 18, 2016, “to develop the facts and determine your

responsibility, if any, in connection with the below charge. On 10/16/2016, at the location of near Highway 118 and Lechuguiala Lane in Alpine, TC, at approximately 19:00 hours, while employed as a Trk Foreman, you allegedly willfully disregarded policy and was negligent affecting the interest of the company by using the company backhoe TLH-0505 for personal use off railroad property without authority. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct - Negligent; 1.6: Conduct - Dishonest; 1.13: Reporting and Complying with Instructions; 74.5: Seat Belts. 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 30, 2016, the Carrier found that “the evidence more than substantially supports the charges against you. The following charge has been sustained: On 10/16/2016, while employed as a Trk Foreman, you willfully disregarded policy and was negligent affecting the interest of the company by using company backhoe TLH-0505 for personal use off railroad property without authority. This is a violation of the following rule(s) and/or policy: 1.6: Conduct - Negligent; 1.6: Conduct - Dishonest; 1.13: Reporting and Complying with Instructions; 74.5: Seat Belts. 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.

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.

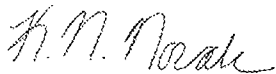
AWARD:

Claim denied.

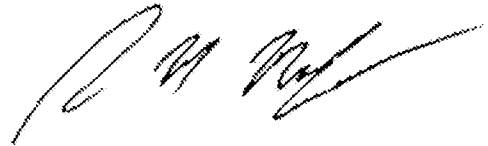


Robert Grey  
Neutral Member

Dated: May 11, 2018



Katheirne Novak  
Carrier Member



Andrew Mulford  
Labor Member