

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad
(Former Missouri Pacific Railroad)

Case No. 93
Award No. 93

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal from service) of Mr. S. Lewis, by letter dated December 23, 2016, for alleged violation of Rules 1.6: Conduct - Careless, 2.21: Electronic Devices, 42.2.2: Other Speed Requirements and 42.6: Grade Crossings was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP416RR16D/1678990 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Lewis shall be returned to service, have all mention of the charges and discipline removed from his personal record and provided him with all other compensation, rights and benefits 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 December 2, 2016, Investigation held December 13, 2016, "... to develop the facts and determine your responsibility, if any, in connection with the below charge. On 11/15/2016, at the location of Eunice, LA, near Milepost 569.6, Dequincy Subdivision, at approximately 14:20 hours, while employed as a M/O (Ats) Tamper, you allegedly were careless of safety while traveling the ATIS-9808 through the crossing, causing you to strike a vehicle. This is a possible violation of the following rules(s) and/or policy: 1.6: Conduct – Careless; 2.21: Electronic Devices; 42.2.2: Other Speed Requirements; 42.6: Grade Crossings. 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 December 23, 2016, the Carrier found that “... the evidence more than substantially supports the charges against you. The following charge has been sustained: On 11/15/2016, while employed as a M/O (Ats) Tamper, you were careless of safety while traveling the ATS-9808 through the crossing, causing you to strike a vehicle. This is a violation of the following rule(s) and/or policy: 1.6: Conduct – Careless; 2.21: Electronic Devices; 42.2.2: Other Speed Requirements; 42.6: Grade Crossings. 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.

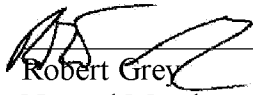
There is substantial evidence in the record to uphold the Carrier’s determination of culpability. However, the mitigating factors proven by the Organization persuade the Board that termination is excessive under the facts and circumstances of this record. In particular, the Board notes that the police were present at the scene of the accident and issued the automobile operator a ticket for the accident, while not issuing any ticket to Claimant.

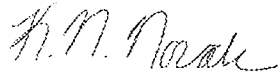
The Board stresses that Rule 2.21 applies to all electronic devices, and that use of a hands-free device is not an exception or permitted use under the rule.

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

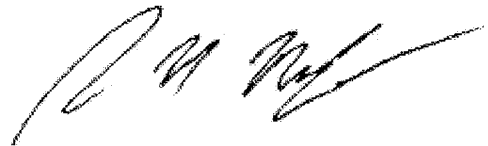
AWARD:

Claim sustained in accordance with the Findings. The Carrier is ordered to make the Award favorable to the Claimant effective on or before 30 days following the date below.


Robert Grey
Neutral Member
Dated: March 28, 2019



Katheirne Novak
Carrier Member



Andrew Mulford - 3/28/19
Organization Member