

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad
(Former Missouri Pacific Railroad)

Case No. 94
Award No. 94

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

1. The Carrier's discipline (dismissal) of Mr. J. Graciano, by letter dated January 19, 2017, for alleged violation of Rules 1.6: Conduct - Dishonest and 1.13: Reporting and Complying with Instructions was without just and sufficient cause, unwarranted and in violation of the Agreement (Carrier's File 1682386 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Graciano shall now '*** have the matter cleared from his record, returned to his former position and reimbursed for any net loss of compensation (i.e., all missed straight time, overtime, double time and otherwise) suffered in connection with the Carrier's inappropriate discipline.' (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 December 21, 2016, Investigation held January 5, 2017, "... to develop the facts and determine your responsibility, if any, in connection with the below charge. On 12/09/2016, at the location of System Tie Gangs, at approximately 10:00 hours, while employed as a M/O (Tlh) Backhoe, you allegedly were dishonest when you claimed travel allowance and per diem you were not entitled by changing your address. This is a possible violation of the following rule(s) and/or policy: 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 January 19, 2017, the Carrier found that “... the evidence more than substantially supports the charges against you. The following charge has been sustained: On 12/09/2016, while employed as a M/O (Tlh) Backhoe, you were dishonest when you claimed travel allowance and per diem you were not entitled by changing your address. This is a violation of the following rule(s) and/or policy: 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. 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.

The Board has carefully considered the Organization’s procedural arguments and finds them unpersuasive in view of this particular record.

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. Therefore, it will not be disturbed by this Board.

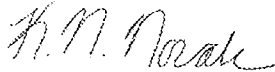
AWARD:

Claim denied.

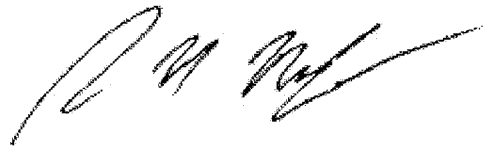


Robert Grey
Neutral Member

Dated: March 28, 2019



Katheirne Novak
Carrier Member



Andrew Mulford - 3/28/19
Organization Member