

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad  
(Former Missouri Pacific Railroad)

Case No. 95  
Award No. 95

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

1. The Carrier's discipline (dismissal) of Mr. T. Vinson, by letter dated February 8, 2017, for alleged violation of Rule 1.6: Conduct - Careless and Rule 42.2.2: Other Speed Requirements was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP956PA17/1682246D MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Vinson shall '... be allowed to return to work with all vacation and seniority rights unimpaired, that the charges and discipline be removed from his personal record, and that he be compensated for any lost time such as straight time, including overtime, holidays, per/diem, rest day travel allowance and actual time and mileage for attending this hearing due to discipline issued in connection with these charges and that would have normally been covered by the Carrier benefits.' (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 January 20, 2017, Investigation held January 24, 2017, "... to develop the facts and determine your responsibility, if any, in connection with the below charge. On 1/09/2017, at the location of Denison, TX, near Milepost 660.14, Choctaw Subdivision, at approximately 12:00 hours, while

employed as a Welder, you allegedly failed to stop within 1/2 the range of vision of an unannounced red flag while backing up in a hy-rail vehicle running over the flag. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct – Careless; 42.2.2: Other Speed Requirements. 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 February 8, 2017, the Carrier found that “... the evidence more than substantially supports the charges against you. The following charge has been sustained: On 1/09/2017, while employed as a Welder, you failed to stop within 1/2 the range of vision of an unannounced red flag while backing up in a hy-rail vehicle running over the flag. This is a violation of the following rule(s) and/or policy: 1.6: Conduct – Careless; 42.2.2: Other Speed Requirements. 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.”

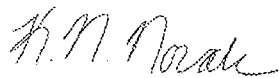
The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties’ respective positions, whether or not specifically addressed herein.

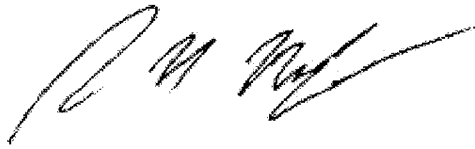
The Board finds that there is not substantial evidence in the record to uphold the Carrier’s determination of culpability. Under the facts in the record, there is nothing that Claimant could have done in this situation.

AWARD:

Claim sustained. In accordance with Rule 22, this includes straight time, vacation, health and welfare benefits and railroad retirement. 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