

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad
(Former Missouri Pacific Railroad)

Case No. 96
Award No. 96

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

1. The Carrier's discipline (dismissal) of Mr. T. Basco by letter March 1, 2017, for alleged violation of Rule 1.6: Conduct - Quarrelsome and the Workplace Violence Policy was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP507JF17/1683625D MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Basco shall have '... all charges be dismissed, the discipline of dismissal be removed, and the Claimant be reinstated to active service immediately, and to be paid and compensated as outlined in the first paragraph of this letter, in addition to any and all other compensation he may have received for the before mention date and continuing.' (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 February 2, 2017, Investigation held February 23, 2017, "... to develop the facts and determine your responsibility, if any, in connection with the below charge. On 02/01/2017, at the location of 5757 Coliseum Blvd, Alexandria, LA, at approximately 15:00 hours, while employed as a Work Equip Mech, you allegedly failed to represent the Union Pacific in a professional manner when you were dealing with a local auto dealership in Alexandria. You allegedly cursed and screamed

at the representative of the dealership as well as made physical contact with your chest followed by threats of physical violence. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct – Quarrelsome; Workplace Violence Policy. 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.”

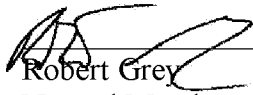
In a discipline letter dated March 1, 2017, the Carrier found that “... the evidence more than substantially supports the charges against you. The following charge has been sustained: On 02/01/2017, while employed as a Work Equip Mech, you failed to represent the Union Pacific in a professional manner when you were dealing with a local auto dealership in Alexandria. You allegedly cursed and screamed at the representative of the dealership as well as made physical contact with your chest followed by threats of physical violence. This is a violation of the following rule(s) and/or policy: 1.6: Conduct – Quarrelsome; Workplace Violence Policy. 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.”

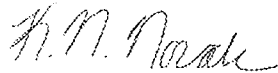
The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, 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. Claimant is reinstated to service with full seniority unimpaired, but without back pay.

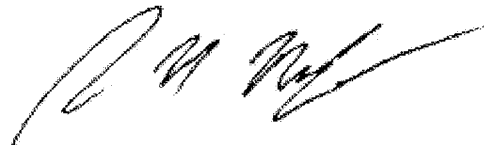
AWARD:

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