

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employes Division - IBT

and

Union Pacific Railroad
(Former Missouri Pacific Railroad)

Case No. 97
Award No. 97

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

1. The Carrier's discipline (dismissal) of Mr. V. Brookins, by letter dated February 7, 2017, for alleged violation of Rule 1.6: Conduct - Careless and Rule 1.13: Reporting and Complying with Instructions was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP802BF17/1684185 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant V. Brookins '... shall be made whole for all financial losses as a result of the violation, including compensation for the straight time for each regular workday lost and holiday pay for each holiday lost. This is to be paid at the rate of position assigned to the claimant at the time of removal of service. This amount is not to be reduced by earnings from alternate employment, obtained by the claimant while wrongfully removed from service. This should also include any general lump sum payment or retroactive general wage increase provided in any applicable agreement that becomes effective while claimant was out of service. Any overtime needs to be included for the lost overtime opportunities for any position the claimant could have held during the time he was removed from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had he not been removed from service. Any health, dental and vision care insurance premiums, deductibles and copays that he would not have paid had he not been unjustly removed from service.' (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 10, 2017, Investigation held January 18, 2017, "... to develop the facts and determine your responsibility, if any, in connection with the below charge. On 01/02/2017, at the location of Mount Pleasant, TX, near Milepost 482.75, Pine Bluff Subdivision, at approximately 20:25 hours, while employed as a Brdt Pwr Unit (R), you allegedly were careless of safety when you operated a single Brandt truck with 14 loaded cars, resulting in a main track collision and derailment, damaging the track and cars. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct – Careless; 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. Property damage has been recorded in this incident that is greater than the FRA threshold and affects the MAPS Rule Category. 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 7, 2017, the Carrier found that "... the evidence more than substantially supports the charges against you. The following charge has been sustained: On 01/02/2017, while employed as a Brdt Pwr Unit (R), you were careless of safety when you operated a single Brandt truck with 14 loaded cars, resulting in a main track collision and derailment, damaging the track and cars. This is a violation of the following rule(s) and/or policy: 1.6: Conduct – Careless; 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

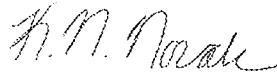
before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties' respective positions, whether or not specifically addressed herein.

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.

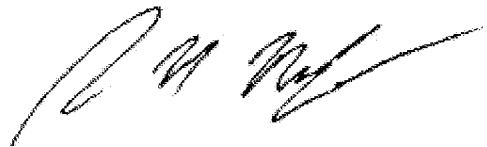
AWARD:

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