

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad
(Former Missouri Pacific Railroad)

Case No. 99
Award No. 99

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

1. The Carrier's discipline (dismissal) of Mr. P. Weatherspoon, by letter dated April 12, 2017, for alleged violation of Rule 1.6: Conduct - Negligent was without just and sufficient cause, unwarranted and in violation of the Agreement (System File UP519JF17/1686573 MPR).
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall immediately return Claimant P. Weatherspoon to service, dismiss all charges and remove all mention of the discipline from his record. The Carrier shall also pay and compensate the Claimant for all lost compensation (i.e., straight time, overtime and otherwise) as well as any lost vacation, retirement or seniority credits."

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 March 24, 2017, Investigation held March 28, 2017, "... to develop the facts and determine your responsibility, if any, in connection with the below charge. On 03/14/2017, at the location of Sanderson, TX, near Milepost 506.71, Sanderson Subdivision, at approximately 12:40 hours, while employed as a Restricted Brandt Power Unit Operator, you allegedly were negligent in your operation of Brandt Truck 84672 resulting in damage to the unit. Additionally, on 3/15/2017, you allegedly were negligent in your operation of Brandt Truck 83087 resulting in

damage to the unit. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct – Negligent. 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.”

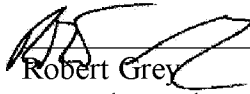
In a discipline letter dated April 12, 2017, the Carrier found that “... the evidence more than substantially supports the charges against you. The following charge has been sustained: On 03/14/2017, while employed as a Restricted Brandt Power Unit Operator, you were negligent in your operation of Brandt Truck 84672 resulting in damage to the unit. Additionally, on 3/15/2017, you were negligent in your operation of Brandt Truck 83087 resulting in damage to the unit. This is a violation of the following rule(s) and/or policy: 1.6: Conduct – Negligent. 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.

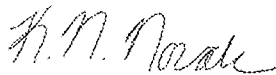
AWARD:

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.

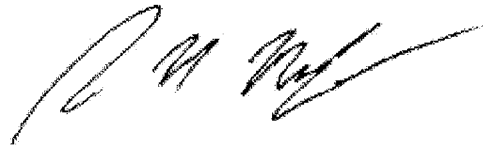


Robert Grey
Neutral Member

Dated: March 28, 2019



Katheirne Novak
Carrier Member



Andrew Mulford - 3/28/19
Organization Member