

PUBLIC LAW BOARD NO. 7660

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT**

and

**UNION PACIFIC RAILROAD COMPANY
[Former Chicago and North Western Transportation Company]**

**Case No: 101
Award No: 101**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) imposed up Mr. U. Henson, by letter dated March 17, 2017, in connection with allegations that he violated Rule 1.6: Conduct - Dishonest was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File RI-1719C-802/1685332 CNW).
2. As a consequence of the violation referred to in Part 1 above, Claimant U. Henson's ' ... Level 5 termination should be expunged from his personal record. Claimant be immediately reinstated to service and compensated for all wages lost, straight time and overtime excluding but not limited to earnings from outside employment, beginning with the day he was removed from service and ending with his reinstatement to service or return from medical leave. Claimant be compensated for any and all losses related to the loss of fringe benefits that can result from dismissal from service, i.e., Health benefits for himself and his dependents, Dental benefits for himself and his dependents, Vision benefits for himself and his dependents, Vacation benefits, Personal Leave benefits and all other benefits not specifically enumerated herein that are collectively bargained for him as an employee of the Union Pacific Railroad and a member of the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters. Claimant to be reimbursed for all losses related "to personal property that he has now which may be taken from him and his family because his income has been taken from him. Such losses can be his house, his car, his land and any other personal items that may be garnished from him for lack of income related to this dismissal' (Employees' Exhibit 'A-2')."

FINDINGS:

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the Brotherhood of Maintenance Employees Division – IBT (hereinafter referred to as the “Organization”) and the Union Pacific Railroad Company (hereinafter referred to as the “Carrier”). Upon the whole record, a hearing, and all evidence as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing thereon. The Claimant was ably represented by the Organization.

The Claimant, Utarus Henson, has been employed by the Carrier for approximately two years and held the position of System Cold Air Blower at the time of his dismissal. The Carrier alleged that the Claimant violated Rule 1.6(4): Conduct (Dishonest) when he improperly reported and claimed compensated time for two hours he did not work on February 1, 2017. It maintains that the Claimant is responsible for submitting the proper payroll information for the work he performs and his conduct therefore constitutes theft.

A hearing and investigation was conducted on March 6, 2017. On March 17, 2017, the Carrier notified him in writing that he was dismissed from service. The Organization filed its claim on April 18, 2017. The Carrier issued a final written decision sustaining the dismissal on July 19, 2017 and denied the subsequent appeals by the Organization. The Organization rejected the Carrier’s decision and moved to have the matter adjudicated before this Board.

In discipline cases, as the one before the Board here, the burden of proof is upon the Carrier to prove its case with substantial evidence and, where it does establish such evidence, that the penalty imposed is not an abuse of discretion. The Board does not find any procedural errors that nullify the need to review the merits of the dispute. Upon review of all the evidence adduced during the on-property investigation, the Board here finds that the record does not contain substantial evidence that the Claimant was dishonest in violation

of Rule 1.6(4). The Claimant's testimony as well as the testimony of the Carrier's witness Manager of Track Maintenance, Eric Schierholz and ARASA Supervisor, Stacy Grossi, confirms that the Claimant did not perform service on February 1, 2017 and that he did not input the two hours into his "time roll" which led to his receiving compensation for time not worked. The record contains documentary evidence and testimony by Schierholz that another employee input the two hours into the Claimant's payroll records.

While we find the Claimant was not dishonest we do find that he was derelict in not verifying his payroll record before it was submitted for payment, as required. The record contains sufficient evidence that employees working in the Claimant's job classification and assignment must ensure that the payroll information submitted is accurate. The Claimant testified that he knew he did not input the two hours into his payroll records and that he had no basis to check the hours for February 1, 2017. The evidence establishes that the Claimant failed to properly maintain his payroll records. However, the record does not contain the necessary substantial evidence required to find the Claimant guilty of theft.


It is well established in the industry that leniency is reserved to the Carrier where there is no abuse of discretion or where the penalty imposed is excessive. Given the Carrier's inability to present substantial evidence that the Claimant was dishonest, we find the penalty imposed to be arbitrary. However, we find that the Claimant's culpability in that he failed to verify his payroll records constitutes misconduct, which gave the Carrier just cause to pursue disciplinary charges against him.

Accordingly, the Claimant is reinstated to service with no back pay or reimbursement for any out-of-pocket loss. Upon his return to service all other rights under the Agreement are restored, and his Railroad Retirement benefits and seniority shall be unimpaired. Due to the mitigating circumstances described herein, and the absence of a prior disciplinary record, the Claimant's time out of service shall be recorded as a suspension without pay. Upon his return to service his status under the Carrier's Policy for Managing Agreement Professionals for Success ("MAPS") shall be designated at a "MAPS Training 1" level.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Carrier has not provided substantial evidence that the Claimant engaged in dishonest conduct.


AWARD

Claim sustained in part, denied in part.



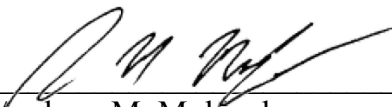
Michael Capone
Neutral Member

Dated: January 17, 2019



Alyssa K. Borden
Carrier Member

Dated: 01/17/19



Andrew M. Mulford
Labor Member

Dated: 01/17/19