

**PUBLIC LAW BOARD NO. 7660**

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

**and**

**UNION PACIFIC RAILROAD COMPANY**

**Case No: 102  
Award No: 102**

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. P. Silos, by letter dated February 24, 2017, for allegedly leaving the work site without proper authority in violation of Rule 48(1) was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File A-1748U-002/1683712 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant P. Silos shall be allowed' ... to return to service. \*\*\* (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, Phillip Silos, has been employed by the Carrier on January 28, 1998 and held the position of Roadway Equipment Operator at the time of his dismissal. The

Carrier alleged that the Claimant violated Rule 48(l) when he left the work site without authorization for 46 minutes on January 27, 2017. There is no dispute that the Claimant left the work site to submit to a drug test as required by the terms of a court ordered probation. Rule 48(l) reads as follows:

(l) Employees need not be granted a hearing prior to dismissal in instances where they refuse to work, voluntarily leave the worksite without proper authority or involuntarily leave their job as a result of apprehension by civil authorities, willfully engage in violence or deliberately destroy Company property. Such employees may, however, make request for a hearing relative to their dismissal, and request therefore must be made within fourteen (14) calendar days from date of removal from service.

In accordance with Rule 48(l), a hearing and investigation was held on February 15, 2017. On February 24, 2017, the Carrier notified the Claimant in writing that in accordance with Rule 48(l), he had forfeited his job since he had voluntarily left the work site without permission. The Organization filed its claim on March 21, 2017. The Carrier issued a final written decision sustaining the dismissal on July 12, 2017 and denied 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 evidence adduced during the on-property investigation, the Board here finds that the record does not contain substantial evidence that the Claimant's conduct constituted a forfeiture of his employment. However, we do find that he was derelict in not notifying his foreman before going to his drug test off the work site.

The record contains sufficient evidence that the Claimant had previously informed his supervisors of the terms of his probation and had been given permission to go for the court ordered drug screening when required. The Claimant testified he was required to call his probation office before 9 a.m. to check if he had to appear for the drug test and that he

regularly did so before reporting for work. On January 27, 2017, the Claimant did not call the probation office until after he reported for work and was told to appear for a drug test. The Claimant notified his foreman when he returned to the work site. The foreman did not take exception to the Claimant's absence. The Manager of Track Maintenance, Phillip Egan, Jr., subsequently notified the Claimant that he was removed from service.

The record does not support the conclusion that the Claimant's conduct constitutes forfeiture as contemplated by the Agreement and in previous arbitral interpretations of Rule 48(l). The Carrier officials had previous notice of the Claimant's probation status. Both Egan and the foreman knew that he would sometimes have to report for the drug test while on duty and subtract the time from his payroll records. Given the specific facts contained in the record, the Claimant's failure to notify his supervisor was improper but his absence of 46 minutes, for reasons well known to his supervisors, does not support the conclusion that he violated Rule 48(l). The previous arbitration awards cited by the Carrier are distinguishable from the facts here. Those awards were based on different circumstances where the length of the absence and the specific acts of the claimants were much more egregious than the Claimant's conduct here.

The decision in this Board's Award No. 59 is inapplicable to the facts presented here. In Award No. 59, the Claimant violated Rule 48(l) after he was denied permission to leave early but did so and claimed it was for personal reasons, which the record did not substantiate. Here, the Claimant's supervisors knew of the court ordered drug test and had previously given him permission to leave work for that purpose. We find that while he should have taken the time to find his foreman before going to the test, his previous conversations with his supervisors regarding the terms of his probation provides a sufficient basis for the Claimant's behavior on January 27, 2017.

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's conduct constitutes forfeiture of his employment, we find the penalty imposed to be arbitrary. However, we find the Claimant culpable in that he failed to contact his foreman before leaving his work


site, which gave the Carrier grounds 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.


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 violated Rule 48(1).

**AWARD**

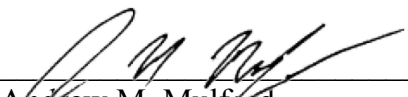
Claim sustained in part, denied in part.

  
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Michael Capone  
Neutral Member

Dated: January 17, 2019

  
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Alyssa K. Borden  
Carrier Member

Dated: 01/17/19

  
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Andrew M. Mulford  
Labor Member

Dated: 01/17/19