

**PUBLIC LAW BOARD NO. 7660**

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

**and**

**UNION PACIFIC RAILROAD COMPANY**

**Case No: 103  
Award No: 103**

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. E. Morales, Jr., by letter dated March 13, 2017, for alleged refusing a UP Random test administered to him in accordance with Union Pacific Railroad (UPRR) Drug and Alcohol Policy on February 21, 2017 at 2941 W. Chicago Ave., Chicago, IL while he was working as a jet snow blower operator was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File RI-1719C-801/1684413 CNW).
2. As a consequence of the violation referred to in Part 1 above, Claimant E. Morales, Jr., shall have his dismissal expunged from his personal record, 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, 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, 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 (e.g., his house, his car, his land and any other personal items that may be garnished from him for lack of income related to his dismissal."

**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, Edwin Morales, has been employed by the Carrier for approximately two years and held the position of Jet Blower Operator at the time of his dismissal. The Carrier alleged that the Claimant violated its Drug and Alcohol Policy when he refused to submit to a random drug test on February 21, 2017. There is no dispute that the Claimant left the location where the testing was to occur and was not available to take the drug test when required.

A hearing and investigation was held on March 3, 2017. On March 13, 2017, the Carrier notified the Claimant in writing that he was dismissed from service. The Organization filed its claim on March 30, 2017. The Carrier issued a final written decision sustaining the dismissal on July 27, 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 the 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

refusal as defined in the Carrier's Drug and Alcohol Policy. However, we do find that the Claimant improperly left the testing site without giving the supervisor, Brandon Griffith, proper notice of a family emergency. Mr. Griffith was in charge of the testing procedure for three employees, including the Claimant. One of the three would be randomly selected for the drug and alcohol test. Even though the Claimant had not yet been informed that he was the one selected for testing, his decision to leave without notifying Griffith of a medical emergency involving his daughter was improper and constitutes misconduct. The Claimant called his regular supervisor, Stacy Grossi, regarding the family emergency but did not mention that he was in the midst of a drug and alcohol test when he left the specimen collection site, which also constitutes misconduct.

During the course of the investigation it was established that the Claimant had a reasonable concern for his daughter's medical condition. The Claimant's testimony and the medical documentation submitted provide a sufficient basis to conclude that a medical emergency did take place. Section 11.3 of the Drug and Alcohol Policy specifically provides that an employee may be excused from submitting to a random test "... in a case of a documented medical family emergency." As such the Carrier abused its discretion when it failed to consider the medical documentation as a legitimate reason to excuse the Claimant and instead dismissed him from service.


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 our conclusion that the medical documentation contained in the record was sufficient to support the Claimant's assertion that an emergency involving his daughter occurred, we find the penalty imposed to be arbitrary. However, we find that the Claimant culpable for failing to provide proper notice to the supervisor in charge of the random testing procedure and leaving the test site. Such conduct constitutes misconduct and 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.

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 refused to submit to a random drug and alcohol test.

**AWARD**

Claim sustained in part, denied in part.

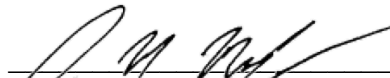
  
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Michael Capone  
Neutral Member

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