

**PUBLIC LAW BOARD NO. 7660**

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

**and**

**UNION PACIFIC RAILROAD COMPANY  
[SOUTHERN PACIFIC TRANSPORTATION COMPANY  
(WESTERN LINES)]**

**Case No: 106  
Award No: 106**

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) imposed up Mr. J. Griffin, by letter dated August 30, 2017, in connection with allegations that he was in violation of Rule 136.4.1 : Exclusive Track Occupancy was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File RI- 1 719C-805/1 693492 CNW).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Griffin's ' ... discipline of dismissal 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, Jerome Griffin, has been employed by the Carrier for approximately nine years and was working as a Foreman at the time of his dismissal. On August 14, 2017, he was notified in writing by the Carrier to report for a hearing and investigation, which was held on August 22, 2017, for violating the applicable rules regarding proper track authority. On August 30, 2017, the Claimant was notified that the Carrier found him guilty of the charges and he was dismissed from service. The record indicates that the Carrier denied subsequent appeals by the Organization and rendered its final decision on November 29, 2017. 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 contains substantial evidence that the Claimant violated Rule 136.4.1. The Claimant’s testimony and the documentary evidence confirm that he failed to properly record the track authority given to him and did not verify information as required when his computer lost power. The Claimant acknowledges he assumed he had proper authority but did not check to insure the information. He had the opportunity to correct his error by

checking with the dispatcher but instead went forward on an assumption that he had the track authority he requested, thereby endangering the safety of the work crews and the public. The record confirms that the Claimant did not follow the required procedure to protect the safety of the work crews under his supervision or that of any other trains entering the area. Despite the Organization's valiant efforts in arguing that the dispatcher also erred and that the Claimant did not act intentionally, we find that he did not follow the applicable safety practices and that the Carrier need not prove that the Claimant acted in a willful manner. Its burden of proof is to show that the Claimant's actions were careless and constitute a disregard for safe work practices, which is confirmed by the record.

Having found that there is substantial evidence in support of the charges, we next review the Carrier's assessment of discipline. There is ample arbitral authority for the discipline imposed by the Carrier given the Claimant's unsafe acts. This Board in Award Nos. 66 and 79, upheld dismissals where the claimants, with the same or more years of service, were found to have created an unsafe work environment. In Award No. 79 we found that "While the Organization makes a valiant effort to prove the Claimant made a mistake and that his conduct was not intentional, we find that the record supports the finding that he was careless and displayed a reckless disregard for the safety of those he supervised." We see nothing in the record that would deter us from making the same findings here.


It is well established in the industry that leniency is reserved to the Carrier where there is no abuse of discretion. The record does not contain any evidence that the Carrier was biased in dismissing the Claimant. The Carrier has an obligation and the discretion to discipline employees for serious offenses that endanger employees and the public. The penalty imposed by the Carrier is not arbitrary, capricious or an abuse of discretion and therefore, in accordance with ample arbitral precedent, the Board will not alter the discipline imposed.

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 established with substantial evidence that the Claimant violated

its rules when he failed to document the proper track authority, resulting in an unsafe work environment.

**AWARD**

Claim denied.

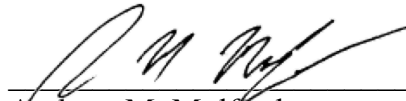
  
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Michael Capone  
Neutral Member

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: 01/17/18