

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 109
Award No: 109

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. S. Osborn, by letter dated May 11, 2017, in connection with allegations that he was in violation of Rule 1.6: Conduct - Insubordinate and Rule 1.13: Reporting and Complying with Instructions was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File J- 1 719C-404/1 688525 CNW).
2. As a consequence of the violation referred to in Part I above, the discipline imposed upon Claimant S. Osborn shall be overturned and cleared from his record and the Claimant shall be returned to service with all rights and benefits unimpaired. This includes compensation for:
 - 1) Straight time for each regular workday lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the Claimant at the time of removal from service (this about is not reduced by earnings from alternate employment obtained by the Claimant while wrongfully removed from service);
 - 2) Any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the Claimant was out of service;
 - 3) Overtime pay for lost overtime opportunities based on overtime for any position Claimant could have held during the time Claimant was removed from service, or on overtime paid to any Junior employee for work the

Claimant could have bid on and performed had the Claimant not been removed from service;

4) Health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service;

5) Also all months of service credit with the Railroad Retirement Board he would have accumulated had he not been unjustly removed from service;

6) All vacation restored and credit given for days missed had he not been unjustly removed from service.

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter. Parties to said dispute were given due notice of hearing thereon.

S. J. Osborn (0232905), hereinafter Claimant, entered the service of the Carrier on April 24, 1978. Claimant was Performing service as a Maintenance of Way Crane Operator when he was allegedly insubordinate with his manager and failed to comply with instructions. After a formal investigation May 1, 2017, Claimant was found in violation of Rule 1.6: Conduct - Insubordinate and Rule 1.13: Reporting and Complying with Instructions and assessed an immediate dismissal. By letter dated June 8, 2017, the Organization presented a claim and asserted that the Carrier failed to meet its burden of proof and that the discipline was arbitrary and unwarranted. By letter dated July 17, 2017, the Carrier denied the Organization's claim. Subsequently, the dispute was progressed in the ordinary and usual manner through the contractual on-property process and the matter now comes before this Board for final adjudication.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. The Board's role is an appellate function. It must be determined whether substantial evidence to sustain a finding of guilt exists. If such evidence is in the record, the Board may not disturb the discipline imposed unless it can be said that the penalty was arbitrary, capricious or a abuse of the Carrier's discretion. A careful review of the record convinces the Board that the Carrier provided sufficient evidence to prove the charges.

The record reflects that in response to his supervisor's instruction to perform certain duties, Claimant became agitated, began "talking in circles," walked up to about fifteen inches from the supervisor's fact and yelled that he would not complete the task. Despite the supervisor's requests for Claimant to calm down, he continued to yell. When his supervisor told him to finish tying down his crane and go calm down, Claimant responded "I'm not going anywhere. You can't make me leave." Tr. 19. When Claimant's supervisor stepped away, Claimant instigated further conflict when he approached his supervisor asking why he was

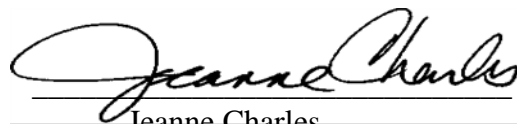
“bothering him.” Claimant’s supervisor emphasized that he wanted Claimant to tie up for the day and Claimant refused, getting into a further exchange with the Supervisor until he finally complied.

Thereafter, the supervisor sought advice from the Drug and Alcohol emergency helpline explaining that Claimant’s behavior was aggressive, loud and boisterous. It was decided that Claimant would be subjected to drug and alcohol testing due to reasonable suspicion. When Claimant was advised of this decision, he responded by stating this was “complete bullshit” and that he was not going to take any “fucking test.” Claimant continued yelling about being subjected to this test. Claimant also made statements about giving the supervisor arsenic filled cookies and attempted to squirt water on the supervisor. In preparation for the test, the supervisor requested that Claimant not drink any water. Claimant drank the water anyway and stated he needed to “take a shit.” In response to this behavior, the supervisor called RMCC. The RMCC agent found it necessary to call law enforcement in order to de-escalate the situation. The Dekalb, Illinois police responded and stayed on site until the UPRR special agent arrived. All of this was done in front of a co-worker who testified at that investigation that “it was almost like a shouting match.” Tr. at 37. Even though Claimant apologized the next day, it was insufficient to mitigate the extreme conduct at issue.

The Board recognizes Claimant’s explanation that he was reacting to what he believed was the supervisor’s accusation that he had not completed his work. However, regardless of how Claimant may have felt offended, his reaction was wholly inappropriate, combative and of such a continuing nature that Carrier agents felt it necessary to call law enforcement to de-escalate the situation. Claimant’s conduct was hostile, abusive and inexcusable. Accordingly, the Carrier established that the imposition of a Level V discipline (dismissal) was reasonable and there is no basis for this Board to disturb the Carrier’s decision. Accordingly, the relief sought by the Organization is denied. The dismissal shall remain on Claimant’s personal record.

AWARD

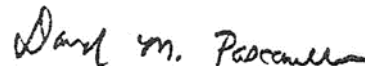
Claim denied.



Jeanne Charles
Neutral Member



Chris Bogenreif
Carrier Member
Dated: 12/02/2019



David M. Pascerella
Labor Member
Dated: 12/09/2019