

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 110
Award No: 110

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. B. Samuelson, by letter dated April 25, 2017, for alleged violation of Rule 1.6: Conduct - Careless and 42.2.2: Other Speed Requirements was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File A-1748U-004/1687781 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Samuelson shall be returned to service with all rights and benefits unimpaired and compensated for time lost including all wage and benefit loss suffered.

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.

Claimant Barry Samuelson entered the Carrier's service on March 31, 2005 and was a 12-year employee working as a Section Foreman - Main Line when he was involved in an on-track collision between his hy-rail vehicle and a contractor water spray truck. On April 9, 2017, Claimant was hy-railing near MP 410 on the Sharon Springs Subdivision, near McAllister, KS when he fell asleep behind the wheel of his hy-rail vehicle while hy-railing on the tracks, which caused him to collide with a contractor spray truck. Claimant was subsequently removed from service pending the results of a formal investigation.

After a formal investigation on April 18, 2017, Claimant was found in violation of Rule 1.6: Conduct - Careless and Rule 42.2.2: Other Speed Requirements and assessed an immediate dismissal. The claim was timely and properly presented and handled by the Organization at all stages of appeal up to and including the Carrier's highest appellate officer. The matter now comes before this Board for final adjudication.

The Carrier maintains that based upon the record developed on the property, the Carrier provided a fair and impartial hearing with notice of charges, opportunity to defend and representation. The Claimant admitted he did not follow the rules and regulations related to on- track safety and operating a hy-rail on the tracks. Claimant admitted he fell asleep behind the wheel of his hy-rail and caused a collision. The Claimant put his own life and the lives of his co-workers in danger. Because such actions violated the rule with which he was charged, the discipline imposed was warranted.

Essentially, the Organization argues that the punishment of dismissal was clearly excessive in light of the various circumstances in this case. First and foremost, the Claimant had twelve years of service with the Carrier and no prior history of discipline. Second, at all times relevant during the investigation, Claimant was forthright, open and honest about what had transpired. At no time did he attempt to hide or conceal what had taken place at approximately 2:20 A.M. on April 9, 2017. Third, the record reveals that the Claimant was assigned as a foreman on a local section gang working the day shift and was not accustomed to working an overnight shift; the incident occurred at a time in which the Claimant would have otherwise been sound asleep. Fourth, there is no dispute that the Claimant is a dedicated and hardworking employee. Fifth, it is undisputed that the incident did not result in any injuries. While the facts show that there was a hy-rail vehicle collision, the Claimant was not acting with intent, nor was he in any way reckless or malicious.

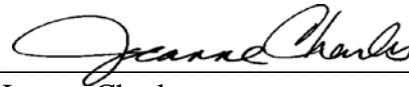
A careful review of the record convinces the Board that, under the circumstances of this case, there is insufficient evidence to support Claimant's permanent dismissal. There is no dispute that Claimant was culpable for the collision that occurred. He admitted that he must have briefly fallen asleep and was traveling close to the water truck causing the collision. Thus, the Carrier has established a violation of the rules cited in the charges.

Regarding the level of discipline imposed, there are several mitigating circumstances that should have weighed against Claimant's permanent dismissal. The Claimant had an unblemished employment record of more than twelve years at the time of the incident. He readily admitted fault which demonstrates he has the ability to correct his behavior such that the Carrier can be reasonably assured that no similar incident will occur in the future. The record reflects that he was working an overnight shift on which he was not accustomed to working. This fact likely contributed to the incident. While the

Carrier is correct to be concerned that the collision occurred and equipment was damaged, given the totality of the circumstances present, just cause dictates that a lesser penalty be imposed. Accordingly, the Organization's claim is sustained, in part. Claimant shall be reinstated with time served and returned on a MAPS I status. No back pay is awarded.

AWARD:

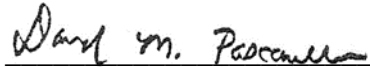
Claim sustained in accordance with the Findings above.



Jeanne Charles
Neutral Member



Chris Bogenreif
Carrier Member
Dated: 12/02/2019



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