

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 112
Award No: 112

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) imposed up Ms. S. Worden, by letter dated August 8, 2017, in connection with allegations that she violated the Union Pacific Railroad's Attendance Policy was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File A-1748U-012/1693284 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Worden shall be returned to service, the matter removed from her record, be provided all rights and benefits unimpaired, made whole by compensating her for all wages and benefit loss including expenses incurred and Railroad Retirement months of service credits and all other loss.

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 Shirley Worden was hired on October 29, 2012. While employed as a System Switch Tie Gang Foreman on Gang 0705, she was cited with a Third Offense Violation of the Attendance Policy when she failed to report for work on July 3 and 5, 2017. During the time frame of her alleged unauthorized absence, she was assigned to a system gang observing an "A" schedule (Five (5) days per week, Eight (8) hours per day).

This case reflects a finding by the Carrier of Claimant's third violation of the policy within a two-month period. She was charged with a First Offense violation of the Attendance Policy on May 15, 2017, when she failed to call her supervisor and was late to work. Claimant took responsibility and signed a waiver of her right to a hearing. On June 27, 2017, Claimant was charged with a Second Offense Attendance Policy violation for an unapproved absence. Claimant signed a waiver of her right to a hearing for this offense, as well. The instant Third Offense charge is due to Claimant's failure to report for her scheduled work assignments on July 3 and 5, 2017. Claimant asserts that she was given permission to take vacation on the days in question.

By Notice of Investigation dated July 24, 2017, the Carrier directed Claimant to report for an investigation hearing in connection with the offense referenced above. After a formal investigation held on August 1, 2017, Claimant was found to be in violation of a Third Offense of the Attendance Policy 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. Because the parties were unable to resolve the matter on the property, the issue is now before this Board for final adjudication.

The Carrier argues that it provided substantial evidence to prove and demonstrate that the Claimant violated the Attendance Policy. The seriousness of her violations fully supports the discipline imposed. Finally, Claimant was accorded all the due process rights required under the Collective Bargaining Agreement and there were no procedural defects serious enough to void the assessed discipline. In sum, the Carrier contends that Claimant was provided a fair and impartial hearing with notice of charges; had an opportunity to defend herself with representation; substantial evidence of the Claimant's guilt was presented; and the discipline imposed was warranted.

The Organization argues that the Carrier failed to produce all relevant witnesses when it became clear at the investigation that a central issue was whether Claimant had authority to be absent on the days in question. The Claimant contended that Supervisor Dan Bryant had given her authorization to use vacation on the days in question. Despite being central to the case, the Carrier failed to make Supervisor Bryant available for questioning (either in person or over the phone) to afford Mr. Bryant a chance to confirm or deny Claimant's position. This constitutes a clear failure on the part of the Carrier to conduct a fair and impartial investigation, it is argued. Further, the Carrier failed to establish that the quantum of discipline was appropriate. An outright dismissal was too severe since Claimant believed that she had authority to be absent on the days in question.

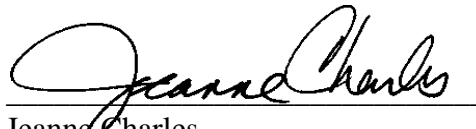
In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. A careful review of the record convinces the Board that, under the

circumstances of this case, the Carrier has failed to meet its burden of proof that dismissal was for just cause.


During the investigation, Claimant explained that she had been authorized to take the days in question as vacation days by Acting Supervisor Dan Bryant. Bryant was not presented as a witness to counter Claimant's defense that she was authorized to take vacation. The Carrier presented proof that Claimant was marked absent but provided no competent proof that it was unauthorized. The Charging Manager, Ronald G. Cooper testified vaguely that Timothy Schweitzer was supervising Claimant on the day she asserts requesting the vacation days. He did not recall speaking to Bryant to investigate the matter and denied speaking to Claimant about the situation. Schweitzer testified that he was not actively supervising Claimant that day. Schweitzer stated that he did speak to Bryant who referred to Claimant's discussion about vacation. There is no evidence that Cooper made an inquiry of Bryant to ascertain whether he had denied Claimant's request for vacation. This could have all been resolved by presenting Bryant as a witness at the investigation since his testimony was material to the charged offense. It is undisputed that the Carrier carries the burden of proof for imposing discipline. In this case, the proof fell woefully short of substantial evidence to support a dismissal. Accordingly, the relief sought by the Organization is sustained. The Third Offense shall not remain on Claimant's personal record. Claimant shall be reinstated and returned to a Second Offense Attendance Policy violation.

AWARD:


Claim sustained in accordance with the Findings.



Jeanne Charles
Neutral Member



Chris Bogenreif
Carrier Member
Dated: 12/02/2019



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

Carrier Member dissent to follow

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad

Case No: 193
Award No: 193

STATEMENT OF CLAIM:

This claim concerns an interpretation dispute regarding Award 112 of Public Law Board (PLB) No. 7660 which reinstated Ms. S. Worden. At this time, the Carrier refuses to comply with the remedy contained in Award 112 of PLB No. 7660 and the Organization requests this Board resolve the question at hand so as to conclude the dispute.

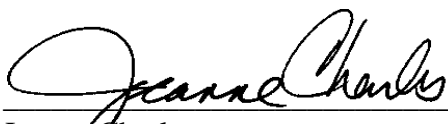
FINDINGS:

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.

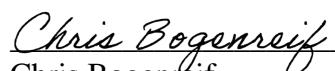
This Board has been advised that the parties have settled this case on the property and have withdrawn this dispute from the Board. Therefore, no further action is required, and the claim shall be dismissed.

AWARD:


Claim dismissed.



Jeanne Charles
Neutral Member



Chris Bogenreif
Carrier Member
Dated: April 6, 2022



John Schlismann
Labor Member
Dated: April 6, 2022