

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 115
Award No: 115

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) imposed upon Mr. T. Rupp, by letter dated September 6, 2017, in connection with allegations that he was in violation of Rule 1.6 Conduct was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File A-1748U-017/1693612 UPS).
2. As a consequence of the violations referred to in Parts 1 above, Claimant T. Rupp shall now have the discipline expunged from his record and '...be made whole by compensating him for all wage and benefit loss suffered by him from his employment termination, any and all expenses incurred or lost as a result, and the alleged charge(s) be expunged from his personal record. Claimant must also be made whole for any and all loss of Railroad Retirement month credit and any other loss.' (Employees' Exhibit "A-2").

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 Todd Rupp had approximately sixteen (16) years of seniority and was working and assigned as a track inspector when the incident involved here occurred.

During Claimant's shift on August 11, 2017, he procured track and time behind the UPY 700 between W005 and W019 on the Greely Subdivision. Claimant's permit contained a box 6 (which instructed Claimant do not foul limits ahead of the UPY 700) and Claimant's permit was marked "joint" (which instructed Claimant that his limits were occupied by the UPY 700). The "joint" permit required Claimant to contact the UPY 700 prior to entering the joint limits. While Claimant was hy-railing, he released the track permit that gave him the authority to occupy the main line. Claimant was occupying track while he had no permission or authority to do so.

When Claimant Rupp released his track authority, he proceeded to the nearest crossing to set his vehicle off the tracks. While he was in route, he proceeded past MP 5 and never contacted the UPY 700. The employees working on the UPY 700 had to give Claimant Rupp the universal "washout" signal (waving your arms, hard hat, or flag back and forth below your belt line) to bring Claimant to a stop. The trainmen proceeded to question Claimant on what he was doing. Claimant told the trainmen that he had a permit to be on track to which the trainmen stated it was "their" main line and they were working with a switch lined against Claimant (switch was in a position that was against Claimant's direction of travel). Claimant never contacted the trainmen prior to entering the joint limits. Not only did Claimant release his permit prior to clearing the track, he entered the train's limits without contacting them, and was dishonest with his managers when they interviewed him. Claimant admitted he released his track authority and admitted he did not contact the trainmen prior to entering their joint limits.

By letter dated August 18, 2017, the Carrier directed the Claimant to report for a formal investigation alleging that the Claimant had released track and time while still occupying track and that he was dishonest. A formal investigation was convened on August 29, 2017. By letter dated September 6, 2017, Carrier informed Claimant that he was found guilty of violating GCOR Rule 1.6: Conduct – Dishonest/Careless of Safety and was assessed an immediate dismissal from service. 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 parties were unable to resolve the dispute on property. 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. A careful review of the record convinces the Board that, under the circumstances of this case, the Carrier met its burden of proof. Accordingly, the relief sought by the Organization is denied. The dismissal shall remain on Claimant's personal record.

AWARD:

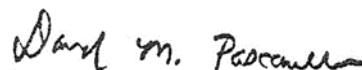
Claim denied.



Jeanne Charles
Neutral Member



Chris Bogenreif
Carrier Member
Dated: 12/02/2019



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