PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employes Division - IBT

and

Union Pacific Railroad

Case No: 117
Award No: 117

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. C. Craig, by letter dated August 18, 2017, for alleged violation of General Code of Operating Rules (GCOR) Rule 1.6: Conduct - Dishonest was unjust, arbitrary, unwarranted and in violation of the Agreement (System File A-1748U-015/1693496 UPS).

2. As a consequence of the violation referred to in Part 1 above, Claimant C. Craig must be reinstated to service, the charges dismissed and he shall be made whole for all financial losses suffered as a result of the violation, including straight time for his position or position he would have held, holiday paid, lump sum payments, retroactive wage increases, overtime for his position or position he would have held or bid to, health, dental and vison care insurance premiums, deductibles and co-payments and all months of service credited towards railroad retirement as well as vacation restored and credit given.

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.

Charles Craig (Claimant) entered the service of the Carrier on July 24, 1995. On June 30, 2017, Claimant was assigned to Gang 4693 as a Track Welder Thermite. The

record reflects no disciplinary history prior to the incident in question. The Carrier alleged that Claimant voluntarily left Carrier property, without proper authority, at 2:30 pm, which was a full hour earlier than his scheduled quitting time.

By letter dated July 24, 2017, the Carrier directed the Claimant to report for a formal investigation alleging that the Claimant was dishonest and claimed time he did not work in violation of Rule 1.6 - Dishonest. A formal investigation was convened on August 2, 2017. By letter dated August 18, 2017, the Carrier informed Claimant that he was found guilty of violating GCOR Rule 1.6 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**.**

The Carrier maintains that it met its burden of proof and no procedural errors justify overturning the decision to dismiss the Claimant. Additionally, Claimant's actions were egregious and cannot be tolerated. He was not performing service for the Carrier when he left an hour early on June 30, 2017. Dishonesty in regard to time worked is an overt instance of theft. Theft is an egregious offense affecting the interests of the Company. Claimant did not refute that he did not work the hours assigned. It was also clearly confirmed that the Claimant and several of his co-workers left Carrier property early and claimed a full day's pay. Claimant's defense that his assembly point was changed is unacceptable and improper since it was not brought up during the Rule 48(l) hearing.

The Organization argues that Claimant was deprived of his right to a fair and impartial hearing since the decision was not made by the Conducting Officer and the action amounts to double-jeopardy since he was also charged with a Rule 48(l) violation in a separate case. Further, the Carrier failed to establish that Grievant did not have permission to leave the premises or that his potentially mistaken belief that he had permission to leave early rose to the level of dishonesty. Lastly, the penalty of dismissal was too severe for the offense which undermines the progressive nature of discipline.

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, there is insufficient evidence to support Claimant's permanent dismissal. While the Carrier has the right to expect employees to work a full day for a full day's pay, the essential inquiry here is whether Claimant was authorized to leave early and receive his full day's pay. If that was the case, the dishonesty charge must fail.

The Carrier has failed to prove that Claimant left the worksite without authorization. Claimant relayed that the supervisor on duty was approached about an

Early Quit (EQ) and reportedly stated that the gang could leave at 2:30 p.m. Claimant provided competent corroborating witness testimony to support this explanation which described in detail how the request for the early quit came about; who was present; and the existence of a management call taking place at 2:00 p.m. Supervisor Hill simply provided a blanket denial that he did not authorize an early quitting time.

Further, Claimant provided unrebutted testimony that he worked through lunch but did not charge the Carrier overtime as provided for in the collective bargaining agreement. Claimant was charged and dismissed along with three (3) co-workers who also left at 2:30 p.m. and worked through lunch. This fact lends additional credence to the rationale for Claimant and the other members of his gang possessing the understanding that they were authorized to leave at 2:30 p.m. In short, leaving early was the trade-off for working through lunch without claiming overtime pay to which they were entitled. Given the totality of the circumstances, the evidence before this Board weighs more favorably toward Claimant. A violation of Rule 1.6 was not established. Accordingly, the relief sought by the Organization is sustained. The discharge shall not remain on Claimant's personal record.

AWARD:

Claim sustained.

Jeanne Charles
Neutral Member

Chris Bogenreif
Carrier Member
Dated:

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

Carrier Member Dissent to follow