

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 119  
Award No: 119

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Ms. S. Worden, by letter dated August 8, 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-013/1693285 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Worden 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 vision 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.

Shirley Worden (Claimant) was assigned as system switch tie gang foreman on Gang 0705. The Carrier alleged that Claimant voluntarily left Carrier property, without proper authority, at 2:30 p.m., which was a full hour earlier than her 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 she did not work in violation of Rule 1.6 - Dishonest. A formal investigation was convened on August 1, 2017. By letter dated August 8, 2017, the Carrier informed Claimant that she 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. Claimant was not performing service for the Carrier when she 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. The Organization's attempt to mitigate the offense by asserting that she only stole an hour of time is an untenable position. Any amount of stolen time is a dismissible offense. Further, this is not the same issue as that raised in the Rule 48L violation. The issue in this case is Claimant's dishonesty in reporting time she did not work. The Rule 48L case concerns leaving the property without authority and abandoning her position.

The Organization argues that Claimant was deprived of her right to a fair and impartial hearing. This action amounts to double-jeopardy since she was also charged with a Rule 48(1) violation in a separate case based upon the same event. Further, the Carrier failed to establish that Grievant violated the charged rule. 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. Claimant admitted to leaving ten (10) minutes early. She explained that she worked through her lunch and left early in lieu of claiming overtime for the missed lunch period, as provided for in the collective bargaining agreement. Claimant explained that this is a common practice as claiming overtime is disfavored among supervisors.

While there is evidence that Claimant left the worksite early without authorization, the Carrier's evidence is insufficient to support the charge that Claimant left an entire hour early. Dan Bryant was Claimant's supervisor on the day in question. William Hill was a

supervisor who notified Timothy Schweitzer, Claimant's supervisor of record, via a text message, that Claimant left early. Neither Bryant nor Hill testified about what time Claimant left the worksite. Neither individual gave a first-hand account of the how it was determined that Claimant left an hour early. The only competent evidence from a manager in the record before this Board is from Schweitzer that he had a conversation with Claimant the day after the incident. Schweitzer explained that he was told Claimant left early, but she did not provide a time certain during their conversation.<sup>1</sup>

Claimant admitted during the on-property investigation that she left work ten (10) minutes early. There was no video or photographic evidence in the record before this Board to contradict her statement or to support the Carrier's allegation that Claimant left an hour early. Despite the Organization's request for it, there was no time stamp produced demonstrating when she entered her time reporting for the day. The only competent evidence concerning what time Claimant left the worksite is her admission that she left ten (10) minutes early. Accordingly, what has been proven is that Claimant left the worksite ten (10) minutes early without authority which violates the rules. Having concluded that Claimant left the worksite early without authorization, the question becomes whether dismissal was the appropriate penalty for leaving ten (10) minutes early.

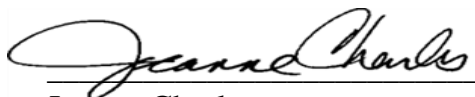
Based on the record before this Board, we are convinced that while the Carrier has the right to expect employees to work a full day for a full day's pay, the penalty of dismissal was too severe. The purpose of discipline is to correct an employee's conduct. The penalty of dismissal is reserved for those circumstances where it is clear that an employee cannot be rehabilitated or that the offense is so serious in the first instance that the employment relationship must be severed. Here, Claimant admitted to her offense. She had worked with the Carrier for five (5) years at the time of the incident. While ten (10) minutes is still short of a full day, there is no indication that Claimant cannot learn from this experience to be accurate in reporting her time. It was unreasonable to terminate Claimant's employment under these circumstances. However, Claimant must be held accountable for her violation of the rule. Accordingly, the Organization's claim is sustained, in part. Claimant shall be reinstated and returned to a MAP 1 status. No back pay is awarded in this case, but the back pay awarded Claimant in Award 112 remains intact and due.

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<sup>1</sup> Tr. at 44.

AWARD:

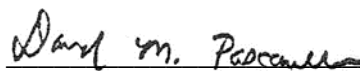
Claim sustained in accordance with the Findings above.



Jeanne Charles  
Neutral Member



Chris Bogenreif  
Carrier Member  
Dated:



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

Carrier Member Dissent to follow