

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 124  
Award No: 124

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) imposed on Mr. J. Adams, by letter dated August 8, 2017, in connection with allegations that he left work without proper authority on June 30, 2017 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File A-1748U-007/1692366 UPS).
2. As a consequence of the violations referred to in Part 1 above, Claimant J. Adams shall be returned to service, the matter removed from his record, be provided all rights and benefits unimpaired, made whole by compensating him for all wages (straight time and overtime) 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.

Jeffery Adams (Claimant) entered the service of the Carrier on May 14, 2007. Claimant was assigned to Gang 4689 as a Thermite Welder Helper Truck Driver on the day in question. The Carrier alleged that Claimant voluntarily left Carrier property, without proper authority, on June 30, 2017, at 2:30 p.m., which was a full hour earlier than his scheduled quitting time. In response, the Carrier issued a letter to Claimant dated

July 14, 2017, advising that he was dismissed from service pursuant to Rule 48(l) of the agreement between The Brotherhood of Railroad Maintenance of Way Employees and The Union Pacific Railroad Company (Agreement) which states:

Employees need not be granted a hearing prior to dismissal in instances where they refuse to work, voluntarily leave the work site without proper authority or involuntarily leave their job as a result of apprehension by civil authorities, willfully engage in violence or deliberately destroy company property. (Emphasis in original).

Under the Agreement, Claimant was permitted to request an investigation hearing relative to his dismissal. A formal investigation was held on July 31, 2017, in North Platte, Nebraska. By letter dated August 8, 2017, the Carrier informed Claimant that he was found guilty and assessed an immediate dismissal.

In reaching its decision the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. The Board finds insufficient evidence in the record to uphold the Carrier's position regarding the charges against Claimant. The record supports the conclusion that Claimant did not receive a fair and impartial hearing. The Organization attempted to offer the testimony of three (3) witnesses to establish that Claimant and others had authorization to leave the worksite an hour prior to the established quitting time. The Hearing Officer denied the request based on the premise that he was conducting and "informal hearing" for the purpose of providing an "explanation and information to the employee as to the reason for the dismissal."<sup>1</sup> The Board finds this to be a flawed interpretation of Rule 48(l).

Rule 48(l) permits the Carrier to dismiss an employee who voluntarily leaves the work site without proper authority without the benefit of a hearing. However, under the parties' collective bargaining agreement, an employee may request a hearing as did the Claimant in this case. Principles of fairness and due process dictate that once a hearing is convened, it must operate as any other hearing allowing for the introduction of evidence; the opportunity to be heard; and the opportunity to examine and cross examine witnesses. What is the purpose of the language permitting an employee to request a hearing if it is not to afford an employee all the protections of due process and to permit the employer to fully get to the truth of what has occurred? This can only be accomplished by way of a full and fair investigative hearing.

Nothing in the language of Rule 48(l) even suggests that a hearing requested under this provision is informational only. Claimant explained that he had authority to leave the work site early. The supervisor reportedly denied that this was the case. Where there is conflicting testimony, a party must be allowed to present witnesses in an effort to

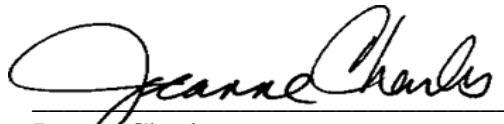
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<sup>1</sup> Carrier's Exhibit B2 at 10.

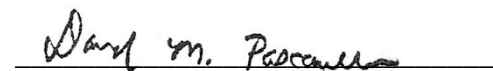
corroborate its version of the facts. This did not occur. The Carrier's failure to provide a full and fair investigation was harmful procedural error. Accordingly, the relief sought by the Organization is sustained. The discharge shall not remain on Claimant's personal record.

AWARD:

Claim sustained.

  
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Jeanne Charles  
Neutral Member

  
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Chris Bogenreif  
Carrier Member  
Dated: 12/02/2019

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

Carrier Member Dissent to follow