

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad

Case No: 126
Award No: 126

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. M. Kuk, by letter dated June 21, 2017, in connection with allegations that he was in violation of Rules 1.6: Conduct - Dishonest, Rule 1.6: Conduct - Insubordinate, Rule 1.13: Reporting and Complying with Instructions and the Policy to Address Violence & Abusive Behavior In The Workplace was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File T-1748U-904/1690503 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Kuk’s dismissal shall be expunged from his personal record, ‘... Claimant be immediately reinstated to service and compensated for all wages lost, straight time and overtime, beginning with the day he was removed from service and ending with his reinstatement to service excluding all outside wages. Claimant be compensated for any and all losses related to the loss of fringe benefits that can result from dismissal from service, i.e., Health benefits for himself and his dependents, Dental benefits for himself and his dependents, Vision benefits for himself and his dependents, Vacation benefits, Personal Leave benefits and all other benefits not specifically enumerated herein that are collectively bargained for him as an employee of the Union Pacific Railroad and a member of the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters. Claimant to be reimbursed for all losses related to personal property that he has now which may be taken from him and his family because his income has been taken from him. Such losses can be his house, his car, his land and any other personal items that may be garnished from him for lack of income related to this dismissal.’ (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.

The Claimant had been employed by the Carrier for approximately 39 years and was working as a System Assistant Foreman at the time of this incident. The Carrier alleged the Claimant had been dishonest in claiming per diem; insubordinate when filing for per diem after being instructed not to; and was quarrelsome and threatening toward his Manager when questioned about his per diem claim on May 2, 2017.

By letter dated May 19, 2017, the Claimant was instructed to attend an investigation into the matter, which was held on June 1, 2017. By letter dated June 21, 2017, the Claimant was notified that the charges against him were sustained and that he was dismissed from employment. In relevant part, the June 21, 2017 letter states the following:

“...After carefully considering the evidence adduced at the hearing, I find that the evidence more than substantially supports the charges against you. The following charge has been sustained:

On 05/02/2017, while employed as a Sys Asst Foreman, you threatened Manager Raymond Johnson after he provided instruction to you. Additionally, you were dishonest when you claimed per diem after being put on notice that you were not entitled to it. This is a violation of the following rule(s) and/or policy:

1.6: Conduct - Dishonest

1.6: Conduct - Insubordinate

1.13: Reporting and Complying with Instructions

Policy to Address Violence & Abusive Behavior In The Workplace

Additionally, **Rule 1.6: Conduct** stipulates that any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated.

Based on your current record, you are hereby dismissed from all service with the Union Pacific Railroad...”

The Organization argues a) the Claimant was denied his contractual right to a fair and impartial hearing, b) the Carrier failed to establish that the Claimant had improperly claimed per diem, c) the Carrier failed to establish that the Claimant was insubordinate or dishonest, d) the Carrier failed to establish that the Claimant had threatened his Manager, and e) the dismissal was arbitrary and unwarranted.

The Carrier argues a) substantial evidence exists to support finding the Claimant in violation of Rules 1.6, 1.13, and the Policy to Address Violence and Abusive Behavior in the Workplace, b) the Claimant was afforded all the elements of due process outlined in the CBA, and the formal investigation was free of reversible error, and c) the dismissal was not arbitrary, capricious, or an abuse of managerial discretion.

Based upon a thorough review of the record, the Claimant's 39 years of service with the Carrier, and the unique facts and circumstances presented in this particular case, the Board finds that the Claimant is to be returned to work with his seniority and benefits unimpaired, but without any compensation for lost time. The Board cautions the Claimant not to squander this last-chance opportunity for reinstatement.

Due to the unique fact pattern presented in this case, this award shall not be used as guidance or precedent in any future cases.

Although the Board may not have repeated every item of documentary evidence nor all the arguments presented in the record, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD:

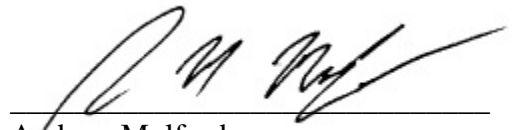
The claim is sustained in part, in accordance with the findings.



Paul Betts
Neutral Member
Dated: 08/01/2019



Chris Bogenreif
Carrier Member
Dated: 08/01/2019



Andrew Mulford
Labor Member
Dated: 08/01/2019