

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad

Case No: 128
Award No: 128

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed up Mr. R. Woods, by letter dated August 4, 2017, in connection with allegations that he was in violation of Rule 74.6.1: Back-up Moves by Engineering Employees and Contractors in Vehicles was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File RI-1719C-804/1691886 CNW).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Woods shall now have the discipline expunged from his record and be ‘*** compensated for all wages lost, straight time and overtime excluding but not limited to earnings from outside employment, beginning with the day he was removed from service and ending with his reinstatement to service or return from medical leave. 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 17 years and was working as a Track Supervisor at the time of this incident. The Carrier alleged that on July 14, 2017, the Claimant had failed to park his vehicle in a position that would minimize backup moves and failed to get out of the vehicle to inspect his surroundings prior to making a backup move.

By letter dated July 17, 2017, the Claimant was instructed to attend an investigation into the matter, which was held on July 26, 2017. By letter dated August 4, 2017, the Claimant was notified that the charges against him were sustained and that he was dismissed from employment. In relevant part, the August 4, 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 07/14/2017, while employed as a Track Supervisor, you failed to park in a position to minimize back up moves, and failed to get out and inspect surroundings prior to initiating a back up move. This is a violation of the following rule(s) and/or policy:

74.6.1: Back-up Moves by Engineering Employees and Contractors in Vehicles

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 meet its burden, and c) the dismissal was arbitrary and unwarranted.

The Carrier argues a) substantial evidence exists to prove and demonstrate the Claimant acted in violation of the charged rule, b) the seriousness of the violation fully supports the dismissal, c) the Claimant was afforded all the elements of due process required by the CBA, and

there were no procedural defects serious enough to void the assessed discipline, and d) the Organization's remedy is excessive, improper, and is not grounded in the agreement.

Based upon a thorough review of the record, the Board finds sufficient evidence to support the finding that the Claimant was guilty of failing to comply with Rule 74.6.1 when he failed to park in a position to minimize back-up moves and when he failed to exit his vehicle to inspect the surroundings prior to initiating the back-up move.

Having determined substantial evidence exists to support the violation, the Board turns to a review of the discipline imposed. The Board will not set aside a Carrier's decision regarding discipline unless we find the Carrier's action to be excessive, arbitrary, or capricious.

Based upon the factors presented here, the Board finds the Carrier's dismissal of the Claimant to be excessive. The Claimant is to be returned to work with his seniority and benefits unimpaired, but without any compensation for lost time. The dismissal is to be reduced to a long-term, unpaid suspension. The Board is fully aware of the Claimant's significant disciplinary record and strongly warns the Claimant to take notice of the same. The Board cautions the Claimant not to squander this last-chance opportunity for reinstatement.

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:

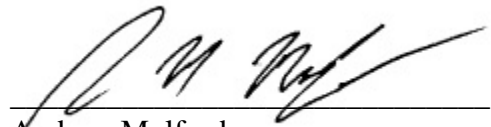
The claim is sustained in part, in accordance with the findings.



Paul Betts
Neutral Member
Dated: 08/01/2019



Chris Bogenreif
Carrier Member
Dated: 08/01/2019



Andrew Mulford
Labor Member
Dated: 08/01/2019