

PUBLIC LAW BOARD NO. 7660
CASE NO. 13

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES

PARTIES
TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s dismissal of Claimant W. Cudney by letter dated May 21, 2013, in connection with allegations that he failed to repair various track defects and also removed the defects from the track defects system and then falsified a report in violation of Rule 1.6 Conduct (4) Dishonesty was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File M-1348C-403/1589122 UPS).
2. As a consequence of the Carrier’s violation referred to in Part 1 above, the Carrier shall now return Claimant W. Cudney to service, remove any mention of the discipline from his personal record and compensate for all straight and overtime hours lost as a consequence of the inappropriate discipline.”

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.

Claimant was a Section Foreman in Green River, Wyoming with 13 years of service. The April 4, 2013 Notice of Hearing charges Claimant with closing out track defects in the reporting system without ever making the necessary repairs to the track and lying about it, in violation of Rule 1.6 (4) Dishonesty, and withholds him from service pending investigation. The May 21, 2013 Notice of Discipline finds him guilty of the charges and assesses him a Level 5 dismissal. The instant appeal resulted.

At the May 13, 2013 Investigation, the facts revealed that on Tuesday, April 23, 2013 MTM Sanchez asked Claimant to repair three defects entered on March 26 involving broken bolts on a spring frog on Track #2 in a designated area, which had to be completed within 30 calendar days under FRA guidelines in order for the track not to be taken out of service or placed on a slow order. Claimant indicated that he was very busy and it would involve overtime, to which Sanchez responded to do what he had to do, and Claimant told him that he would be working late that night. Claimant got involved in other important repairs, and did not recall any specific authorization to work overtime. Sanchez saw Claimant leaving for home at the normal time on Tuesday, and, during the following days, found out that such repairs had not been made, although the defects had been removed from the computer listing.

During questioning of Claimant on Friday, April 26, he initially stated that he had made the repairs and removed them from the record, but, after additional probing, admitted that he removed the items without making the repairs. Claimant explained that he did so intending to timely make the repairs the following morning, and in an effort to assure that his Manager would not get in trouble for being overdue, but that he got involved with other repairs and was so busy that he could not get back to timely repair the cited defects. He took full responsibility for being dishonest in violation of Rule 1.6, expressed sincere regret and made clear that he had learned his lesson and would never do anything like this again. All management witnesses that testified indicated that Claimant was an excellent employee, who was an asset to Carrier and could work in other

then a Foreman capacity, which requires the additional trust factor made questionable by his actions in this case. It appears that in the meeting on Friday, after learning of Claimant's actions and dishonesty, Sanchez disqualified him from his Foreman position, and asked him to leave the area. Claimant was in the process of bidding onto a system gang when he received the Notice of Investigation withholding him from service. Sanchez stated that his Director made the decision to charge Claimant and initiate the investigation, despite his being the charging officer.

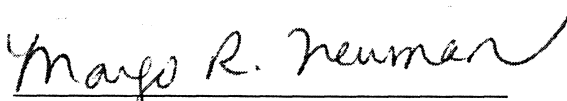
Carrier argues that there is substantial evidence in the record to support the charge of Dishonesty, noting that Claimant admitted the conduct and that he violated Rule 1.6 (4), which can lead to dismissal under its UPGRADE policy. It notes that the penalty was not excessive for the serious violation of falsifying FRA required records and lying about doing so. The Organization contends that Carrier denied Claimant a fair and impartial hearing by removing him from service pending the outcome of the investigation, showing prejudgment. It asserts that the penalty was excessive and failed to take into account the circumstances and mitigating factors concerning Claimant's employment.

A careful review of the record convinces the Board that Carrier has met its burden of proving that Claimant was guilty of a violation of Rule 1.6 (4) Dishonesty, when he closed out track defects in the reporting system without making the necessary repairs and lied about doing so when initially questioned. However, we are convinced that, under the specific circumstances of this case, the penalty of dismissal was excessive and unwarranted. First, Sanchez penalized Claimant for his dishonesty on April 26, 2013 by disqualifying him from his Foreman position, a punishment he believed was more appropriate to the loss of trust involved. Second, Claimant was forthright during the investigation, admitted his wrongdoing and dishonesty, explained his motivation and positive intentions, and accepted full responsibility for his inappropriate actions. The record makes clear that he has learned his lesson and will not repeat this type of conduct. Third, all agree that Claimant is an excellent employee who goes above and beyond the

boundaries of his position for the benefit of Carrier, and attempts to please his superiors. Fourth, Claimant is a 13 year employee with a clear disciplinary record. All of these factors mitigate against the dismissal penalty, in favor of returning Claimant to employment, albeit not in a Foreman's position, without loss of seniority and benefits but without back pay. His record shall be adjusted to reflect a long term suspension. See, e.g. Public Law Board No. 6621, Award 15.

AWARD:

The claim is sustained, in part.



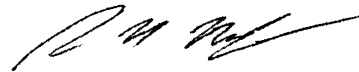
Margo R. Newman
Neutral Chairperson

Dated: 1/15/2016



K. N. Novak
Carrier Member

Dated: 1/15/2016



Andrew Mulford
Employee Member

Dated: 1/15/2016