

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad

Case No: 135
Award No: 135

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. C. Johnston, by letter dated October 4, 2017, for alleged violation of Rule 1.6: Conduct – Dishonest and Rule 1.13: Reporting and Complying with Instructions was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File MK-1748U-605/1695845 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Johnston shall be returned to service with all rights and benefits unimpaired and compensated for time lost.”

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.

At the time of incident, the Claimant was working as Flange Oil Maintainer on Gang 4442 and had approximately 9 years of service with the Carrier. The Carrier alleged the Claimant had falsified lubricator inspection reports completed by the Claimant on August 14, 2017. By letter dated August 24, 2017, the Carrier directed the Claimant to report for a formal investigation into the matter. Following postponement, the investigation was held on September 14, 2017. By letter dated October 4, 2017, the Carrier notified the Claimant that substantial evidence had been found to support the charges against him, and that the Claimant was dismissed from service. In relevant part, the October 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 08/14/2017, while employed as a Fling Oil Mntr-Hr, you performed improper inspections on lubricators and falsified reports of work performed on lubricators. You have been previously coached about proper reporting when uploading the inspection reports with incorrect information. This is a violation of the following rule(s) and/or policy:

1.6: Conduct- Dishonest

1.13: Reporting and Complying with Instructions

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 matter progressed in the normal fashion and is now before the Board for final resolution.

In summary, the Organization argues a) the Carrier failed to meet its burden of proof, and b) the discipline was arbitrary and unwarranted.

In summary, the Carrier argues a) substantial evidence was provided to prove and demonstrate the Claimant acted in violation of the charged rules, b) the seriousness of the Claimant’s violation fully supports the discipline imposed, and c) the Claimant was afforded all the elements of due process required by the Agreement, and there were no procedural defects serious enough to void the Carrier’s action.

After a thorough review of the record, the Board finds the Carrier met its burden in proving the Claimant had incorrectly entered data from his inspections into the Carrier’s database. The record reveals the Claimant made multiple input errors in the transfer of data from his inspection logbook into the Carrier’s database.

On the more significant charge of falsification and dishonesty, the Carrier failed to meet its burden of proving the Claimant was dishonest by falsifying reports of work performed on lubricators. During the investigatory hearing, the Claimant testified that he transferred written information regarding his lubricator inspections, which were detailed in his inspection logbook, into the Carrier’s database. At the investigatory hearing, the Organization made a formal request

for the Claimant's logbook, reasoning that the logbook would accurately reflect the data the Claimant had intended to enter into the Carrier's database and provide proof the Claimant had no intent of deceiving the Carrier. The Hearing Officer allowed the request, and during the hearing, the parties were notified that the Claimant's logbook had been located and the logbook would be provided to the Hearing Officer the following day to be made part of the record.

For reasons unknown to the Board, the Claimant's logbook was never made part of the record. The Board agrees with the Organization's reasoning that the logbook would have accurately reflected the information the Claimant had intended to enter into the Carrier's database, and it would have provided pivotal information as to whether the Claimant had simply erred in the entering of data versus an intention to deceive the Carrier. By failing to provide the Claimant's logbook as agreed to at the investigatory hearing, the Carrier denied itself the opportunity to consider a pivotal matter regarding its Rule 1.6 charge. Because the Carrier failed to consider the information contained in the Claimant's logbook, the Carrier lacked crucial information regarding its charge that the Claimant was dishonest and falsified lubrication reports.

Based upon all the above, the Board finds the Carrier met its burden in proving the Claimant had incorrectly entered data from his inspections into the Carrier's database, but failed to meet its burden of proving the Claimant was dishonest by falsifying reports. The Claimant is to be returned to service with his seniority and benefits unimpaired. Given the fact set here and the arguments presented in this specific case regarding remedy, the Claimant is to be provided back pay calculated at his regular straight time rate, excluding overtime, based upon his normal work week prior to dismissal. The dismissal is to be reduced to a Conference under the MAPS Process Matrix, and reference to the Rule 1.6 charge is to be removed from the Claimant's record.

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:

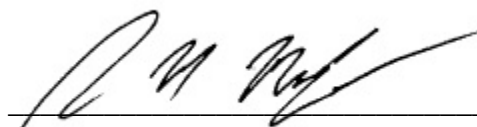
The claim is sustained in accordance with the findings.



Paul Betts
Neutral Member
Dated: 08/01/2019



Chris Bogenreif
Carrier Member
Dated: 08/01/2019



Andrew Mulford
Labor Member
Dated: 08/01/2019