

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad

Case No: 136
Award No: 136

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Frost, by letter dated October 6, 2017, for alleged violation of Rule 1.6: Conduct - Dishonest was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File MK-1748U-604/1696265 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Frost shall ‘...be made whole by compensating him for all wage and benefit loss suffered by him for his Level 5 termination, and the alleged charge(s) be expunged from his personal record.’ (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 approximately 13 years of employment with the Carrier and had been assigned as a Track Inspector approximately one year prior to the incident giving rise to this claim. In July 2017, the Claimant notified supervision that a contractor working on Carrier property, and within the area of track that the Claimant was responsible for inspecting, was failing to properly post Form B boards. Approximately one month later, while inspecting, the Claimant came upon the Form B held by the same contractor. Due to the safety concerns he previously raised with supervision, the Claimant chose not to seek permission to enter the Form B held by the contractor and decided to walk the tracks outside foul (outside five feet of the main

line), reasoning that he could still complete his inspection by walking outside foul and also avoid entering the Form B held by the contractor. When the Claimant completed his inspection reports on said dates, the Claimant indicated in his reporting that all inspections were done by Hi-Rail, but gave no indication that any track segments had been walked.

By letter dated September 13, 2017, the Claimant was advised to report for a formal investigation regarding a violation of Rule 1.6: Conduct – Dishonest, for allegedly falsifying track inspection reports. The formal investigation was conducted on September 21 and 22, 2017. By letter dated October 6, 2017, the Carrier advised the Claimant the charge against him was sustained and he was dismissed from employment. In relevant part, the October 6, 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 08/21/2017, while employed as a Track Inspector, you falsified FRA Track Inspection Reports. This is a violation of the following rule(s) and/or policy:

1.6: Conduct – Dishonest

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 Carrier argues a) the Carrier provided substantial evidence 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 accorded all due process rights required under the Agreement, and there were no procedural defects serious enough to void the assessed discipline.

In summary, the Organization argues a) the Carrier was in violation of the time limit provisions required by the Agreement, b) the Claimant was denied his contractual right to a fair

and impartial hearing as required by the Agreement, c) the Carrier failed to meet its burden of proof, and d) the discipline was arbitrary and unwarranted.

The Board reviewed the time limit argument raised by the Organization and finds it lacking, in that the claim letter dated 11/2/17 failed to contain a postmark. The Board also finds the Organization's arguments that the Hearing Officer failed to provide a fair and impartial hearing to be lacking. The pre-hearing email exchange dated September 13, 2017, appears to be a communication concerning the Agreement Professional Document System (APDS) and the ability of the system to add lesser charges when a Rule 1.6 violation is claimed. It should be noted that the Hearing Officer as well as members of the Organization were copied on the email exchange, and there was no evidence in the record indicating a contemporaneous concern by the Organization involving the email exchange.

In the instant case, the Carrier argues the Claimant never traversed nor inspected the tracks in question. To support its position, the Carrier maintains the Claimant failed to obtain the proper permits to traverse and inspect the tracks. The Carrier argues the Claimant listed the location as being Hi-Railed in his inspection reports when he did not have the authority to enter the location as traversed, or Hi-Railed.

The Organization argues the Claimant had walked the tracks outside of foul to do the disputed inspections, and as a result, the Claimant was not required to obtain permission to enter the Form B held by the contractor. The Organization concedes that the Claimant indicated in his reporting that all inspections were done by Hi-Rail even though the Claimant had walked for some of the inspections, but argues the Claimant was unaware that there was an option in the Carrier's database to input walking for portions of his total inspections. At the location in question, the Organization argues there was a contractor on Carrier property who had failed to post Form B boards properly. The Claimant felt unsafe entering the Form B held by the contract employee, and therefore decided to do his track inspections outside of the foul, thereby not requiring on-track safety.

After a thorough review of the record, the Board finds the Carrier met its burden and convinced the Board the Claimant falsified FRA track inspection reports. The Claimant's testimony reveals he was aware that some of the information he entered into the database was inaccurate and did not correctly reflect the totality of the inspections performed. For example, on the inspection report dated August 21, 2017, the Claimant reported a Hi-Rail inspection

between MP 466.25 and MP 487.74, but testified he had stopped his inspection at MP 478.80. For the inspection report dated August 24, 2017, the Claimant reported a Hi-Rail inspection for the entire area between MP 466.25 and MP 479.1, but testified he had walked the section of track between MP 478 and MP 479.1. For the inspection report dated August 25, 2017, the Claimant reported a Hi-Rail inspection for the entire area between MP 466.25 and MP 479, but testified he had walked the section of track between MP 478 and MP 479. For the inspection report dated August 28, 2017, the Claimant reported a Hi-Rail inspection for the entire area between MP 466.25 and MP 479, but testified he had walked the section of track between MP 478 and MP 479.01. In other words, the Claimant knew the information he entered into the database was not fully accurate, and knew the reports contained inconsistencies based upon the specific methods and means he used to inspect various parts of the track.

Having determined there is substantial evidence in the record to support the charge against the Claimant, the Board will shift its focus to the severity of discipline imposed. Although the Board recognizes the falsification of inspection reports to be a very serious matter, there were a number of mitigating factors here. Although the Claimant had a total of 13 years of service with the Carrier, at the time of incident the Claimant had only one year serving as a Track Inspector. The Claimant was unaware of how to navigate the inspection report database to reflect certain sections of track as being walked, while inputting other sections of track as being Hi-Railed. The Claimant was also unaware that the pre-populated mileposts in the database could be altered. The Claimant testified that he walked the track outside of foul rather than Hi-Rail the track between mileposts 478 and 479 because he felt unsafe entering the Form B held by the contract employee. The record of evidence supports the Claimant's testimony on this point, as he had previously voiced concerns with his supervision over the contractor's failure to post Form B boards properly.

Although these factors serve to mitigate the penalty assessed here, the Board cautions the Claimant on how he addresses similar conflicts moving forward.

Considering the specific facts of this case, and the items noted directly above, the Board finds the Claimant is to be returned to work, with his seniority and benefits unimpaired, but without any compensation for lost time.

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:

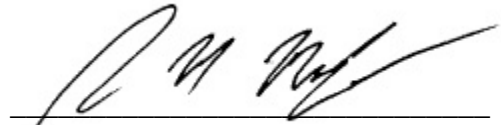
The claim is sustained in accordance with the findings.



Paul Betts
Neutral Member
Dated: 08/01/2019



Chris Bogenreif
Carrier Member
Dated: 08/01/2019



Andrew Mulford
Labor Member
Dated: 08/01/2019