

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad

Case No: 139  
Award No: 139

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed up Mr. J. Cyganik, by letter dated December 8, 2017, for alleged violation of Rule 1.6: Conduct - Dishonest was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File MK-1848U-601/1699734 UPS).
2. As a consequence of the violation referred to in Part (1) above, Claimant J. Cyganik 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-1’).”

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 a Track Inspector. The Carrier alleged the Claimant had been dishonest in falsifying track inspection reports, and by letter dated November 20, 2017, the Claimant was instructed to report for a formal investigation into the matter. The formal investigation was held on November 30, 2017. By letter dated December 8, 2017, the Claimant was notified that the charges against him were sustained and that he was dismissed from employment. In relevant part, the December 8, 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 11/13/2017, while employed as a Track Inspector, you falsified federally required Track Inspection documents. 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.

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 of proof, c) the dismissal was arbitrary and unwarranted.

The Carrier argues a) substantial evidence exists to support finding the Claimant in violation of Rule 1.6 - Dishonest, 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.

After a thorough review of the record, the Board finds the Carrier provided substantial evidence to support its Rule 1.6 violation. Simply put, the Board found it impossible for the Claimant to inspect the various tracks in the time frames provided. Carrier testimony convinced the Board the Claimant could not have inspected the tracks as claimed. Furthermore, Claimant testimony supported the Carrier’s assertion. The Claimant testified that he did not walk all the tracks on his report, his inspections were not “quality inspections”, that they were “speed walk inspections”, and that he was not given the time to do his inspections “the way they needed to be done”.

Having determined substantial evidence exists to support the violation, the Board must review the discipline imposed. There is no dispute here the Claimant had been assigned substantial duties above and beyond his required duties of track inspection. Carrier testimony

confirmed this fact. Furthermore, the Claimant had approached the Carrier on multiple occasions regarding his concern that he did not have enough time, given his other non-inspector assigned duties, to fully and properly inspect his tracks. Based upon this mitigating factor and the unique circumstances presented in this case, the Board finds the Claimant is to be returned to service with his benefits and seniority unimpaired, but without any compensation for lost time. Dishonesty is a serious matter. The Board cautions the Claimant not to squander this last-chance opportunity for reinstatement.

The Board reviewed the procedural arguments raised by the Organization and found them lacking.

Due to the unique fact patterns 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