

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 144
Award No: 144

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) imposed on Mr. A. Romero, by letter dated January 12, 2018, in connection with allegations that he stole from a business while on duty and then was dishonest when interviewed was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File A-1848U-002/1702559 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Romero shall be returned to service, the matter removed from his record with all rights and benefits unimpaired."

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. Parties to said dispute were given due notice of hearing thereon.

Claimant A. Romero established and maintained approximately twenty (20) years of seniority in the Carrier's Maintenance of Way Department. Leading up to the discipline at issue in this case, he was assigned and working as a track arc welder near Cheyenne, Wyoming. By letter dated December 19, 2017, the Carrier directed the Claimant to report for a formal investigation alleging that, on December 14, 2017, he stole from a business while on duty and then was dishonest when questioned. The Carrier

asserted that this constituted a violation of Rule 1.6: Conduct - Immoral and Rule 1.6: Conduct - Dishonest.

By letter dated February 13, 2018, the Organization presented a claim and asserted that the Carrier failed to meet its burden of proof and that the discipline was arbitrary and unwarranted. By letter dated April 3, 2018, the Carrier denied the Organization's claim. Subsequently, the dispute was progressed in the ordinary and usual manner through the contractual on-property process and the matter now comes before this Board for final adjudication.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. The Board's role is an appellate function. It must be determined whether substantial evidence to sustain a finding of guilt exists. If such evidence is in the record, the Board may not disturb the discipline imposed unless it can be said that the penalty was arbitrary, capricious or an abuse of the Carrier's discretion. A careful review of the record convinces the Board that the Carrier provided sufficient evidence to prove the charges.

Rule 1.6: Conduct stipulates "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. Claimant took a frozen fruit bar ("paleta") from the freezer section of an establishment named the Tortilla Factory in Cheyenne, Wyoming and put it into his pocket without paying for it. An employee notified the Tortilla Factory Manager who confronted Claimant and provided him several opportunities to pay for the paleta fruit bar. Claimant denied having taken anything and left the store without paying for the item. Only after the Tortilla Factory posted a surveillance video of Claimant stealing the paleta fruit bar to its Facebook page and it was reported to the Carrier's management, did he return to the Tortilla Factory and pay for the stolen item claiming it was a misunderstanding.

Additionally, Claimant was not forthright when he was approached by the store management and the Carrier's management. He denied that he had stolen the paleta. Claimant changed his story only after Manager M. Arambulo advised him that he was going to the Tortilla Factory to talk to its manager. Claimant had several opportunities to correct his behavior. He failed to do so. The Board concludes that the record establishes that Claimant engaged in a willful disregard for the Carrier as he was on duty and traveling in a Company vehicle at the time. There was no evidence presented to justify mitigating the penalty. Accordingly, the relief sought by the Organization is denied. The discharge shall remain on Claimant's personal record.

AWARD

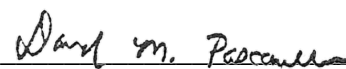
Claim denied.



Jeanne Charles
Neutral Member

William C. Ince

William C. Ince
Carrier Member
Dated: April 24, 2020



David M. Pascarella
Labor Member
Dated: 4-24-2020