

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company
(former Chicago and North Western
Transportation Company)

Case No: 145
Award No: 145

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. B. Mason, by letter dated January 26, 2018, in connection with allegations that he was in violation of Rule 1.13: Failure to Comply with Instructions and Hy-rail JSA (Job Safety Analysis) was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File J-1819C-401/1702305 CNW).
2. As a consequence of the violation referred to in Part 1 above, the discipline imposed upon Claimant B. Mason shall be overturned and cleared from his record and the Claimant shall be returned to service with all rights and benefits unimpaired. This includes compensation for:
 - '1) straight time for each regular workday lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the Claimant at the time of removal from service (this about is not reduced by earnings from alternate employment obtained by the Claimant while wrongfully removed from service);
 - 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the Claimant was out of service;

- 3) overtime pay for lost overtime opportunities based on overtime for any position Claimant could have held during the time Claimant was removed from service, or on overtime paid to any Junior employee for work the Claimant could have bid on and performed had the Claimant not been removed from service;
- 4) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service;
- 5) also all months of service credit with the Railroad Retirement Board he would have accumulated had he not been unjustly removed from service;
- 6) all vacation restored and credit given for days missed had he not been unjustly removed from service.' (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. Parties to said dispute were given due notice of hearing thereon.

Claimant B. Mason worked for the Carrier for approximately twenty-one (21) years. At the time of this dispute, he was assigned and working as a Track Inspector/Track Supervisor near Lawson, Missouri. On December 21, 2017, Manager McKeever rode with him in his assigned company vehicle for inspections as part of the e-ramp process. The e-ramp process allows observation of task completion and subsequent training opportunities related to applicable rules and processes. The Job Safety Analysis (JSA) required him to stop prior to a control point and complete a job briefing. Claimant did not stop prior to the control point. As a result, Manager McKeever advised him of the proper procedures at the time, which includes coming to a stop. Claimant did not dispute the discussion with McKeever at the time and received a copy of the e-ramp coaching form.

By letter dated February 6, 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. Subsequently, the dispute was progressed in the ordinary and usual manner through the contractual on-property process, including a claims conference on November

30, 2018. The matter was not resolved and now comes before this Board for final adjudication.

The Carrier argues that Claimant admittedly violated the JSA which requires, “When approaching each Control Point, the driver of the lead vehicle must stop to confirm authority into and beyond the Control Point with other passengers in vehicles.” Claimant did not stop and have a briefing with the other employees in his vehicle to confirm their track authority past the control point. Additionally, Claimant had voluntarily signed a conditional reinstatement agreement on October 20, 2017, only two (2) months prior to the incident at the center of this claim. The Agreement was a last chance opportunity to return to service following an egregious safety rule violation.

The Organization argues that Claimant was in full compliance with all applicable rules and regulations at all points. According to the Organization, the Carrier’s own witness agreed that Claimant performed his duties appropriately and that his job briefing covered all required points. Moreover, that same witness was ultimately not able to provide testimony to the fact that Claimant had not complied with the Hy-rail JSA policy. The Carrier’s sole evidence is inconclusive. As such, the Carrier clearly did not satisfy its burden of proof and the charges must be overturned.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. A careful review of the record convinces the Board that, under the circumstances of this case, the Carrier met its burden of proof that dismissal was for just cause. Claimant’s employment was conditioned upon a valid last chance agreement which specifically put him on notice that a violation of the JSA policy involving Hy-rails would revert him back to the status of a dismissed employee without the benefit of a hearing. The Carrier conducted a hearing and found sufficient evidence to find a violation of the JSA Policy. The Board finds no basis to disturb the discipline. Accordingly, the relief sought by the Organization is denied. The dismissal 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

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