

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: 147
Award No: 147

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. M. Attig, by letter dated February 16, 2018, in connection with allegations that he was in violation of Rule 74.6.1 Back-up Moves by Engineering Employees and Contractors in Vehicles was excessive, unduly harsh and an abuse of discretion (System File B-1819C-201/1703120 CNW).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Attig shall now be made whole by compensating him for all wage and benefit loss suffered by him for his employment termination and for any and all expenses incurred or lost, as well as via fully restoring to him all seniority, having the alleged charges expunged from his employment record and his being returned to service immediately and being made whole for any and all loss of retirement month credit and any other loss."

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 Marlon D. Attig established and held seniority with over thirteen (13) years of service in the Carrier's Maintenance of Way Department. At the time of this dispute, Claimant was assigned and working as a Maintenance of Way boom truck operator. On January 30, 2018, Claimant attempted to leave the parking lot of a

commercial business and, while making a back-up move, struck a Union Pacific Signal mast. The amount of damage caused by the incident triggered an FRA damage report.

After a formal investigation on February 8, 2018, Claimant was found in violation of 74.6.1: Back-up Moves by Engineering Employees and Contractors in Vehicles and assessed an immediate dismissal. The claim was timely and properly presented and handled by the Organization at all stages of appeal up to and including the Carrier's highest appellate officer. The matter now comes before this Board for final resolution.

The Carrier maintains that based upon the record developed on the property, the Carrier provided a fair and impartial hearing with notice of charges, opportunity to defend and representation. Claimant admitted on the day in question he did drive into, and knock over, the signal mast. Claimant admitted that he became distracted with highway traffic and an evergreen tree that he lost sight of the signal mast. Claimant's disciplinary status entering this formal hearing was "MAPS 2" under the established MAPS discipline policy. The sustained charge of a critical rule violation required Claimant's dismissal from service on account of progressive discipline.

Essentially, the Organization argues that the punishment of dismissal was clearly excessive in light of the various circumstances in this case. First and foremost, the Carrier denied the Claimant his contractual right to a fair and impartial hearing as required by Rule 19 and, as a result, the instant claim must be sustained, and the Claimant be allowed the requested remedy. Furthermore, the Carrier offers no evidence as to how the Claimant violated the rule if there indeed was no forward movement available and the Claimant had walked around his vehicle to confirm it was safe. The fact that the incident resulted in damage does not mean that the Claimant was guilty of violating the pertinent rule. It was unrefuted by the Carrier that the Claimant was backing up at a slow speed when the vehicle struck the signal, that the vehicle had only retained minor marks of damage and that the signal is mounted with a Break Away Mounting System which is the reason it fell over. As such, the Carrier clearly did not meet its burden of proof and the claim must be sustained.

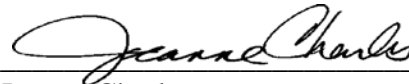
In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. A careful review of the record convinces the Board that, under the circumstances of this case, the Carrier has failed to meet its burden of proof that dismissal was for just cause.

Rule 74.6.1 states, in part, that "Work must be planned to minimize back-up moves and to avoid driving into areas requiring back-up moves. No back-up move is allowed when a forward move can safely be made." In addition, "before initiating a back-up move, the driver must walk to the rear of the vehicle to confirm that it is safe to move unless a second person is directing the move." Further, when a second person is not available, the "driver must stop every 150 feet. After stopping, the driver must secure the

vehicle against movement, walk to the rear of the vehicle and visually confirm that the way is clear.” The record reflects that the conditions were icy. Claimant provided un rebutted testimony that he walked around the vehicle and was operating the vehicle at 2-3 miles per hour. He stated he was in a position where the safest thing for him to do was to back up the vehicle. He also testified that a large truck and evergreen tree were obstructions that he was trying to avoid when the mast was hit. There was no eyewitness to contradict his testimony. Thus, there is insufficient evidence that Claimant violated the rule. The totality of the circumstances leads the Board to conclude in favor of the Claimant. Accordingly, the relief sought by the Organization is sustained. The dismissal shall not remain on Claimant’s personal record. Claimant shall be reinstated to his former position, compensated accordance with Rule 19D and placed at a MAP 2 status. The Carrier is ordered to make the Award effective on or before 30 days following the date of the Award.

AWARD:

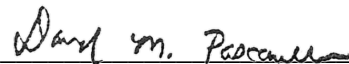
Claim sustained in accordance with the Findings above.



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