

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 149
Award No: 149

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. J. Englehardt, by letter dated March 5, 2018, for alleged violation of Carrier rule(s)/or policy: Rules 1.6: Conduct - Dishonest, 1.13: Reporting and Complying with Instructions and Item 10-1: Union Pacific Railroad Policies-Statement of Policy on Ethics and Business Conduct-Coaching was unjust, arbitrary, unwarranted and in violation of the Agreement (System File T-1848U-903/1704279 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Englehardt shall have the dismissal expunged from his record, be returned to service with all rights and benefits unimpaired and compensated for time lost including all wage and benefit loss suffered."

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 John Englehardt established and maintained seniority in the Carrier's Maintenance of Way Department for thirty-seven years, working as a System TKO Operator near Mile Post 6.5 in Lacey, Washington. Prior to the instant matter, Claimant was assigned and working as an American Railway and Airway Supervisors Association (ARASA) Supervisor. He served in that role from 2013 to 2017. Claimant had the

responsibility to conduct and record coaching and field training events for Engineering Department employees. Carrier was tasked with reducing the number of production gang supervisors in the field. Claimant was subsequently demoted to a machine operator's position under the BMWED agreement. Inquiring as to why his position was reduced, Claimant was informed that he had failed, on occasion to plan properly for his gang's work and had shorted his gangs on materials. Claimant's manager, Randy Ruiz, felt Claimant was not displaying solid leadership skills. As part of the documentation process, Manager Ruiz visited the Claimant's former workgroups who reported that they had been written up for failures under the Engineering Field Training Exercise (EFTX) policy, but never had the opportunity to discuss or signoff on the write up with Claimant. Put differently, these employees had notations added to their records for coaching/training events that they had no knowledge of and which they believed never occurred. The EFTX policy requires the Supervisor or observer to discuss the EFTX event with the employee so there is a clear understanding of the expectations and issues surrounding the event. These allegations were investigated by Manager Ruiz and Assistant Vice President Eric Gehringer. Upon reviewing Claimant's logs for the last year, it was discovered Claimant had entered numerous EFTX events for locations where he was not present. Claimant was subsequently removed from service pending the results of a formal investigation.

After a formal investigation on February 13, 2018, Claimant was found in violation of Rule 1.6: Conduct – Dishonest; 1.13: Reporting and Complying with Instructions; and Item 10-1: Union Pacific Railroad Policies - Statement of Policy on Ethics and Business Conduct Coaching 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. Carrier maintains that it provided substantial evidence to demonstrate Claimant was dishonest when he falsified EFTX records. Claimant asserted the EFTX observations occurred at specific locations, yet Claimant was not physically present at those locations. Because such actions violated the rule with which he was charged, the discipline imposed was warranted.

Essentially, the Organization argues that the punishment of dismissal was clearly excessive in light of the various circumstances in this case. The Carrier improperly notified the Claimant and the General Chairman of the allegations levied against the Claimant. Carrier's charge letter dated February 8, 2018, alleged that the Claimant was in the location of Spokane, Washington near Mile Post 12.0 when he was allegedly in violation of the Carrier's rules and/or policies. However, undisputed testimony revealed that the Claimant was in fact performing his duties as a System TKO Operator at Mile Post 6.5 in Lacey, Washington, nearly five (5) hours away from the location identified on

the Carrier's charge letter. By failing to provide accurate information, the Carrier denied the Claimant his right to a fair and impartial hearing. The Carrier failed to provide the Organization with a copy of the hearing transcript and its decision to dismiss the Claimant as prescribed by Rule 48 of the Agreement depriving Claimant of his rights under the collective bargaining agreement.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for that of the Carrier, but to rule upon whether the Carrier's actions were unjust, unreasonable or arbitrary so as to constitute an abuse of the Carrier's discretion. Absent such findings, we are not justified in disturbing the penalty. A careful review of the record convinces the Board that, under the circumstances of this case, the dismissal was for just cause.

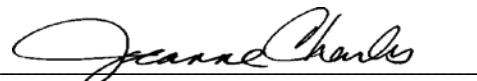
In this case, the evidence establishes that Claimant entered more EFTX events than he was able to perform in a day. Additionally, the record evidence reflects that he entered events for locations where he was not in a position to observe employees because he was not present. Specifically, Claimant entered events on the Albert Lea Subdivision (Minnesota/Northern Iowa area) when he was in Peoria, IL. When confronted about these discrepancies, Claimant refused to accept any responsibility.

The Organization's argument that it is not necessary to be present is not persuasive. The nature of a field training exercise is to observe an employee's work performance, use of equipment, and appearance under circumstances that reflect realistic operating conditions. It stands to reason that in order to conduct such evaluations, the observer must be present. Thus, reporting that an EFTX event had occurred where the manager, Claimant in this case was not present, is sufficient to establish deceptive dealings. Neither is Claimant's explanation that he simply made a mistake with documenting from the wrong logbook sufficient to overturn the dismissal.

Acts of dishonesty are a serious offense. The extent of the dishonesty was not of a trifle impact. Falsification of reports which are relied upon to effectively operate the business of the Carrier goes to the core of the trust that is paramount to the employment relationship. Given the serious nature of the offense and considering even that Claimant was a long serving employee, we cannot find that the action taken by the Carrier was unjust, unreasonable or arbitrary under the circumstances presented here. There was no evidence presented to justify mitigating the penalty. Finally, there are no procedural errors that warrant disturbing the discipline. Accordingly, the relief sought by the Organization is denied. The dismissal shall remain on Claimant's personal record.

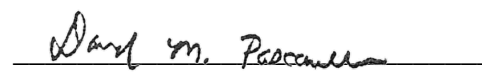
AWARD:

Claim denied.



Jeanne Charles
Neutral Member

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



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