

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad

Case No: 161  
Award No: 161

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. J. Rivera, by letter dated April 20, 2018, in connection with allegations that he violated Rule 136.3: Job Briefings was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File A-1848U-006/1707113 UPS).
2. As a consequence of the violation referred to in Part 1 above Claimant J. Rivera’s ‘... Dismissal shall be expunged from his personal record. Claimant be immediately reinstated to service and compensated for all wages lost, straight time and overtime, beginning with the day he was removed from service and ending with his reinstatement to service excluding all outside wages. Claimant be compensated for any and all losses related to the loss of fringe benefits that can result from dismissal from service, i.e., Health benefits for himself and his dependents, Dental benefits for himself and his dependents, Vision benefits for himself and his dependents, Vacation benefits, Personal Leave benefits and all other benefits not specifically enumerated herein that are collectively bargained for him as an employee of the Union Pacific Railroad and a member of the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters. Claimant shall be reimbursed for all losses related to personal property that he has now which may be taken from him and his family because his income has been taken from him. Such losses can be his house, his car, his land and any other personal items that may be garnished from him for lack of income related to this dismissal.’ (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.

Prior to the current dispute, the Claimant had been dismissed by the Carrier for a different matter. A claim was filed on the previous matter, and through an arbitration decision, the Claimant was returned to work without pay. Upon his return to service in December 2017, the Carrier placed the Claimant at a MAPS 2 disciplinary level.

In March of 2018, the Claimant was working as a Flange Oiler Maintainer and had approximately 24 years of service. The Carrier alleged that on 3/22/18, the Claimant failed to provide proper documentation of On-Track Safety (OTS) job briefings and that his actions were a possible violation of Carrier Rule 136.3: Job Briefings.

By letter dated 3/29/18, the Carrier directed the Claimant to report for a formal investigation of the matter, which was held on 4/5/18. By letter dated 4/20/18, the Carrier informed the Claimant that he was found guilty and was dismissed from service. In relevant part, the 4/20/18 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 03/22/2018, while employed as a Flange Oil Mntr A, you failed to provide proper documentation of On-Track Safety (OTS) job briefings conducted, including all supplemental documentation of On Track Safety protection relevant to the lubricator maintainer position for the last 60+ days from incident. This is a violation of the following rule(s) and/or policy:

136.3: Job Briefings

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 adjudication.

The Organization argues a) the Claimant was denied his contractual right to a fair and impartial hearing. The Carrier failed to provide the Claimant’s General Chairman with a notice

of the investigation, b) the Carrier failed to meet its burden of proof, and c) the discipline was arbitrary and unwarranted.

The Carrier argues a) substantial evidence was provided to prove and demonstrate the Claimant acted in violation of the charged rules, b) the seriousness of the Claimant's violation, coupled with application of progressive discipline under the MAPS policy, fully supported the discipline imposed, c) the Claimant was afforded all the elements of due process required by the Agreement, and there were no procedural defects serious enough to void the assessed discipline, and d) the Organization's remedy is excessive, improper, and is not grounded in the Agreement.

Initially, the Organization alleges the Carrier made a fatal procedural error under Rule 48(c), when it failed to provide the Claimant's General Chairman a notice of investigation prior to the hearing held on 4/5/18. The Board respectfully disagrees. Although the Carrier admits to initially sending the notice of investigation to the wrong General Chairman, evidence indicates the proper General Chairman was emailed the notice of investigation on 4/2/18. Furthermore, a review of the hearing transcript indicated that Local Chairman Murphy was not hindered in his representation of the Claimant at hearing based upon the timing of the notice provided by the Carrier to the correct General Chairman.

Prior to the current dispute, the Claimant had been dismissed by the Carrier for a different matter. A claim was filed regarding the previous dismissal, and under Award 38 of PLB No. 7660 (Referee Margo Newman), the Carrier was directed to "convert the termination to a long term suspension without pay and to offer Claimant reinstatement to service, without loss of seniority or diminishment of future benefits." Because the arbitration decision was silent as to the Claimant's record, the Carrier returned the Claimant to a MAPS 2 status in accordance with Part 3.7 of the MAPS policy, which states:

"3.7 Arbitration Decisions: If a dismissed employee is returned to service as a result of a court decision or an arbitration decision or award, the conditions of the decision or award will be controlling for the purposes of adjusting the employee's record. If a decision or award is silent with regard to the employee's record, the employee's record will revert to the status of a second triggering/training event with a thirty-six (36) month retention period. The time spent in dismissed status will not apply to the retention period of a prior violation."

The Organization argues that the language of Award 38 of PLB No. 7660 does not allow the Carrier to modify the terms of the Claimant's reinstatement and the Claimant should have been returned to service with a clean slate rather than being assessed a MAPS 2 status upon his return to service. The Board respectfully disagrees. This Board has previously been presented with a similar challenge. In Award 99 of PLB No. 7660 (an interpretation of Award 34 of PLB No. 7660, Referee Margo Newman), the Board stated:

"...Under all of these circumstances, we deny the Organization's request to find that the Carrier's decision to return Claimant at the status of a second triggering/training event with a 36 month retention period did not comply with its obligation in effectuating the remedy directed in Award 34. Under the findings of SBA 279, Award 1044, we conclude that the Carrier's challenged action was appropriate..."

The Board agrees with the reasoned logic of Referee Newman and is not inclined to deviate from it here. As such, the Board finds the Carrier's assessment of a MAPS 2 status upon the Claimant's recent reinstatement to be appropriate.


A thorough review of the record convinced the Board that the Carrier provided substantial evidence to prove the Claimant's actions were a violation of the cited rule. The Claimant was advised that a field training exercise (FTX) would be conducted on his territory on Thursday, 3/22/18. During the 3/22/18 FTX, the Claimant was unable to provide documentation regarding his On-Track Safety job briefings and other related documents that are required by the FRA and Carrier policies. The Carrier then gave the Claimant an additional three days to provide the required documentation. The Carrier met with the Claimant on Monday, 3/26/18, but the Claimant was still unable to provide the required documentation.

Given the discussion above and the Claimant's inability to supply the required documentation, the Board cannot find the Carrier acted in an unreasonable, arbitrary, or capricious manner in its dismissal of the Claimant. Therefore, the claim must be denied.

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:

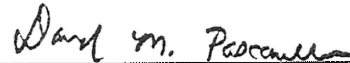
The claim is denied.



Paul Betts  
Neutral Member  
Dated:



William C. Ince  
Carrier Member  
Dated: January 27, 2020



David M. Pascarella  
Labor Member  
Dated: 1-27-2020