

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 166
Award No: 166

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. V. Armour, by letter dated October 10, 2018, in connection with allegations that he violated Rule 1.6 Conduct – Dishonesty, Item 10-I Union Pacific Railroad Policies – Statement of Policy on Ethics and Business Conduct – Critical and Rule 1.13 Reporting and Complying with Instructions was excessive, unduly harsh and an abuse of discretion (System File A-1848U-010/1713505 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant V. Armour shall now be made whole by compensating him for all wage and benefit loss suffered by him for his employment termination, any and all expenses incurred or lost as a result and the alleged charge(s) be expunged from his personal record, with Claimant also being made whole for any and all loss of Railroad Retirement month’s credit and any other losses.”

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 V. Armour established and maintained approximately twenty-one (21) 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 System Truck Driver Foreman assigned to Gang 9085 when he was terminated for conduct in violation of Rule 1.6: Conduct – Dishonest, Item 10-I: Union Pacific Railroad Policies - Statement of Policy on Ethics and Business Conduct and Rule 1.13: Reporting and Complying with Instructions.

By letter dated September 18, 2018, the Carrier directed the Claimant to report for a formal investigation alleging that, on September 4, 2018, the Claimant allegedly had been dishonest in using his company purchasing card and also later when asked about the purchases he made with his company purchasing card.

On September 26, 2018, the Carrier convened a formal investigation and carried it through to conclusion. As a result of the Corporate Audit investigation the disputed charges were brought alleging Claimant was dishonest in using his Company Visa card to purchase personal items and with Carrier officials when asked about these purchases. Carrier also alleged Claimant purchased personal items including cigarettes, soda, food items and fireworks with his Company Visa card and then included these items in his logs as Company expenses in direct violation of Carrier guidelines and policies.

By letter dated October 10, 2018, the Carrier informed Claimant that he was found guilty of violating Rule 1.6 Conduct – Dishonesty, Item 10-I Union Pacific Railroad Policies – Statement of Policy on Ethics and Business Conduct – Critical and Rule 1.13 Reporting and Complying with Instructions. Claimant was assessed an immediate dismissal from the Carrier's service.

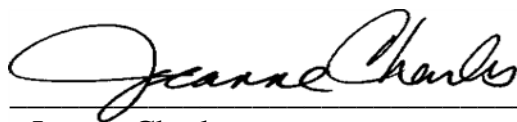
By letter dated November 6, 2018, the Organization presented an appeal to the Carrier and asserted that it failed to meet its burden of proof and that the discipline was arbitrary and unwarranted. By letter dated December 20, 2018, the Carrier denied the Organization's appeal. Subsequently, the dispute 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 insufficient evidence to prove the charges.

The evidence reflects that Claimant improperly used the company purchasing card. However, the conduct did not rise to the level of fraud or dishonesty as contemplated by Rule 1.6. Claimant processed his credit card logs in an irregular manner over a relatively brief period of time. He admitted to allowing other employees to use his card at the request of a supervisor when he was otherwise occupied with work. This testimony was un rebutted. His personal card and the company card are similar in color and the Auditor acknowledge that mistakes are sometimes made. It is plausible that such a mistake could have occurred in this case. Given the glowing character references submitted on Claimant's behalf from co-workers and supervisory employees, his 21-year unblemished employment record, and his action to reimburse the Carrier for an item mistakenly purchased, any doubt should weigh in favor of Claimant's ability to respond to corrective action. Failure to do so was an arbitrary and unreasonable application of the disciplinary process. The Organization's claim is sustained, in part. Accordingly, Claimant shall be reinstated at a MAPS Level 1 for failing to follow proper card purchasing procedure.

AWARD

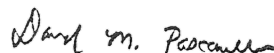
1. Claim sustained in accordance with the findings above.
2. Claimant is to be returned to service following a 16-month suspension and is otherwise awarded back pay for net wages loss, if any, with seniority unimpaired and credit for his missed months with railroad retirement. No overtime is awarded.
3. Claimant shall be reinstated at a MAPS Level 1.
4. The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto.



Jeanne Charles
Neutral Member



William Ince
Carrier Member
Dated: March 30, 2021



David M. Pascarella
Labor Member
Dated: March 30, 2021