

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company [former
Southern Pacific Transportation Company (Western Lines)]

Case No: 170
Award No: 170

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) imposed upon Mr. A. Vega, by letter dated October 15, 2018, in connection with allegations that he violated Rule 1.6 Conduct – Quarrelsome, Rule 1.6 Conduct – Insubordinate and Rule 1.13 Reporting and Complying with Instructions was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File M-1845S-701/1715087 SPW).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Vega's dismissal shall be expunged from his personal record. Claimant shall 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."

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 Antonio Vega was employed as a Welder assigned to Gang 8175 working near Bloomington, California on the date giving rise to this dispute. Claimant worked for the Carrier for approximately six (6) years without having suffered any prior discipline.

By letter dated September 6, 2018, the Carrier directed the Claimant to report for a formal investigation alleging that, on August 24, 2018, the Claimant was insubordinate when asked to assist with a broken rail on the Mojave Subdivision at Mile Post 475.14 and also was quarrelsome toward coworkers by making threatening comments.

On September 26, 2018, the Carrier convened a formal investigation and carried it through to conclusion. By letter dated October 15, 2018, the Carrier informed Claimant that he was found guilty of violating Rule 1.6 Conduct – Quarrelsome, Rule 1.6 Conduct – Insubordinate and Rule 1.13 Reporting and Complying with Instructions. Claimant was assessed an immediate dismissal from the Carrier's service, as a result.

By letter dated December 13, 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 January 30, 2019, 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.

The Organization maintains, Carrier failed to meet its burden of proof in connection with all of its charges. The burden of proof in a discipline case is on the Carrier and as reviewed by the Organization during the on-property handling, the evidentiary record does not establish that Claimant violated the charged rules. Additionally, Claimant was not insubordinate to his accuser herein, as they simply worked in different sub-departments of the Carrier's service and thus had no hierarchical relationship to one another that would furnish grounds for one employee being insubordinate to another. Claimant's words in this case constituted nothing more than mere "shop talk", as it was nothing exceptional for the context involved.

The Carrier argues that Claimant was provided a fair and impartial hearing with notice of charges, opportunity to defend and representation; substantial evidence of the

Claimant's guilt was presented; and the discipline imposed was warranted. Claimant admitted he violated Carrier Rule 1.6: Conduct as charged. His admission waives any procedural objections and serves to bar this appeal. Claimant's dismissal was proper in light of the seriousness of the offenses and is consistent with the treatment of all other employees engaged in similar conduct. Claimant's conduct destroyed his employment relationship as well as Carrier's confidence and trust in him. It remains Carrier's position there is no basis to overturn the discipline imposed.

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 charge of insubordination. However, there is sufficient evidence to establish that Claimant was quarrelsome.

According to the Carrier's policy, insubordination is defined as follows:

When an employee's actions or statements indicate a refusal (as opposed to a failure for cause) to carry out the instructions of a supervisor which are work, safety or policy related and which conform to accepted Company and Industry practice, or when an employee demonstrates gross disrespect towards a supervisor.


The Board finds no violation of Rule 1.13. There is no evidence of a direct order which Claimant refused. At most he was unhelpful when given the option to help the crew with the broken rail. Therefore, Claimant was not insubordinate.

The Carrier's rules describe quarrelsome behavior as "When an employee's continued behavior is inclined or disposed toward an angry verbal confrontation with others in the workplace." Claimant admitted using profane and vulgar language. It is clear that he was irritated about not being able to work on the list of welding jobs that were pending. Irrespective of that, his behavior was quarrelsome in that he used profane language of a confrontational nature while communicating with co-workers. The Carrier contends that Claimant's statements were "clearly discourteous" and amounted to acts of hostility. While the Board agrees the behavior was discourteous, we do not agree that the statements amounted to acts of hostility. Claimant never threatened to take any action against any employee. Thus, the Carrier has only established that Claimant was quarrelsome in violation of Rule 1.6.

Having determined that Claimant violated Rule 1.6, the Board must consider whether the penalty of dismissal was arbitrary, capricious or an abuse of discretion. The Board finds that several mitigating factors exist to overturn the dismissal. First, Claimant has a solid work record of being a good performer. Second, there is no other evidence of misconduct in his record. Third, it is significant that co-worker B.D. Long explained that this was unusual behavior for Claimant. On balance, there is no evidence that Claimant's conduct cannot be corrected. The imposition of such a final penalty was punitive and contrary to the corrective nature of disciplinary action. As such, dismissal was an abuse of discretion under the circumstances present in this case. Accordingly, the relief sought by the Organization is sustained, in part. The discharge shall not remain on Claimant's personal record. Claimant shall be reinstated at MAPS Level 2.

AWARD

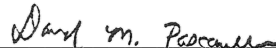
1. Claim sustained in accordance with the Findings above.
2. Claimant is to be returned to service following a 16-month suspension and is otherwise awarded back pay for net wages loss, if any, for his time out of service, with seniority unimpaired and credit for his missed months with railroad retirement. No overtime is awarded.
3. 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