

PUBLIC LAW BOARD NO. 7660  
AWARD NO. 182

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION - IBT RAIL CONFERENCE

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. D. Inman, by letter dated April 16, 2019, in connection with allegations that he violated Rules 1.6: Conduct - Dishonest and the part that reads ‘... Any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated.’ (Employes’ Exhibit ‘A-1’), was excessive, arbitrary, and disparate (System File A-1948U-007/1721240 UPS).

2. As a consequence of the violation referred to in Part (1) above, Claimant D. Inman shall now be allowed ‘... to return to service. \*\*\*’(Employes’ 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.

Claimant has been employed by the Carrier for 13 years and worked as a Track Inspector in Grand Island, NE on February 27, 2019. Claimant received a Notice of Investigation dated March 14, 2019, advising him that he was charged with dishonesty by falsifying an FRA report indicating that he had inspected switches in the yard when he had not done so. The Investigation was held on March 27, 2019, and Claimant was served with a Notice of Discipline Assessed dated April 16, 2019, finding him guilty of the charges in violation of Rule 1.6 Conduct - Dishonest. He was issued a dismissal based on the nature and seriousness of the violation. This claim protests such action.

The facts are not in dispute. The record reveals that Claimant was inspecting track on February 27, 2019 and completing his FRA report to be submitted at the end of the month. He turned in his FRA report indicating that he had inspected 15 yard switches, when he had not done so. When this was discovered by his supervisor, and Claimant was questioned, he admitted that he had made this entry because he was not feeling well, knew the report had to be submitted timely, and planned to inspect the switches the following day if he was at work. On February 28, when another Track Inspector was assigned to inspect these same switches, he found a substantial defect in one of them requiring that it be taken out of service. Claimant accepted responsibility for his poor judgment, indicated that he had never done anything like this before, and apologized for his actions, asking the Carrier to give him another chance to continue his long career with the railroad.

The Carrier contends that Claimant's admission satisfies its burden of proving that he violated Rule 1.6, dishonesty, by substantial evidence, citing PLB 7660, Award 39. It notes the seriousness of the infraction and potential for disastrous consequences, and asserts that the dismissal is in line with the penalty set forth in the Rule, Carrier's UPGRADE policy, and precedent upholding dismissal as the appropriate penalty for dishonesty regardless of length of service, relying on PLB 6459, Award 19. The

Organization argues that, while it does not condone Claimant's conduct, there are mitigating factors in this case supporting its request that Claimant be permitted to return to work and resume his career, including his long time good service, the fact that this was a one time lapse in judgement, and that Claimant admitted his actions when confronted and took full responsibility for them.

On the basis of the entire record, the Board concludes that the Carrier met its burden of proving the charge of dishonesty against Claimant through his admissions and other evidence. The record establishes that Claimant knowingly falsified FRA documents, and that such conduct has been proven to be a serious infraction that supports the penalty of dismissal, regardless of the employee's length of service or the fact that they eventually admitted their conduct. See, e.g. PLB 7633, Case 35; PLB 6459, Award 19. As this Board stated in Award 42, at page 4:

“Claimant's 11 years of service, his willingness to accept responsibility for his actions, and his intention to do what is right for Carrier with the resources available, may be factors that could be taken into account by Carrier when considering a leniency reinstatement. However, they do not provide a basis for the Board to overrule a reasoned disciplinary decision of Carrier that is supported by substantial evidence.”

We conclude that the dismissal penalty, while harsh, was neither arbitrary, excessive or unwarranted in this case.

AWARD:

The claim is denied.

*Margo R. Newman*

---

Margo R. Newman  
Neutral Chairperson

*Chris Bogenreif*  
Christopher Bogenreif  
Carrier Member

*John Schlismann*  
John Schlismann  
Employee Member

Dated: March 31, 2022

Dated: March 31, 2022