

PUBLIC LAW BOARD NO. 7660
AWARD NO. 187

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES 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. C. Reynolds, by letter dated October 30, 2019, in connection with allegations that he failed to comply with Rules 1.6: Conduct - Careless; 42.2.2: Other Speed Requirements; 1.13 Reporting and Complying with Instructions; 42.6: Grade Crossings; and ‘Rule 1.6: Conduct stipulates that 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.’ (Employees’ Exhibit ‘A-1’) was excessive, arbitrary, disparate, imposed without due process, without the Carrier having met its burden of proof and in violation of the Agreement (System File MK-1948U-611/1730175 UPS).

2. As a consequence of the violation referred to in Part (1) above, Claimant C. Reynolds shall now be returned to serve and ‘... made whole by compensating him for all wage and benefit loss suffered by him for his Level 5 termination, and the alleged charge(s) be expunged from his personal record.’ (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.

Claimant has been employed by the Carrier for 21 years and worked as a Track Inspector on Gang 6595 at the relevant time. Claimant received a Notice of Investigation dated September 23, 2019, advising him that he was charged with failing to stop while operating a hy-rail vehicle at a gated public crossing, with knowledge that the track shunts were inoperable, resulting in a collision with public cross traffic and causing damage to both company and public property, and citing 4 different possible Rule violations. The Investigation was held on October 15, 2019, and Claimant was served with a Notice of Discipline Assessed dated October 30, 2019, finding him guilty of the charges in violation of Rules 1.6 Conduct - Careless (and the final sentence of Rule 1.6), 42.2.2 Other Speed Requirements, 1.13 Reporting and Complying with Instructions, and 42.6 Grade Crossings. He was issued a dismissal based on his current record. This claim protests such action.

The record reveals that Claimant has been a Track Inspector for 14 years, and on September 8, 2019 was assigned to traverse the Main line on the Nampa Subdivision in his hy-rail traveling west to check for defects for FRA compliance. He filled out the required paperwork, making note that the shunts were inoperable, which means that they would not activate the automatic warning devices to warn the public of oncoming traffic at a crossing. Claimant's supervisor confirmed that Claimant had told him of this issue in the past, that parts to repair the shunts were on order, and that on this date he knew of the issue but did not tell Claimant that other vehicles were available for his use.

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Claimant acknowledged that he knew the applicable rules, including that he was to approach each crossing ready to stop within one-half the distance of his vision, and indicated that his reduced speed from 30 to 22 mph showed that he slowed down when approaching this crossing, but since he did not see any traffic, he proceeded through it. He explained that due to the angle at which the road the vehicle was on came into the track, he was unable to see it until it was in the crossing, and he tried to stop to avoid a collision, including attempting to derail his hy-rail truck, but was unable to do so. It appears that wet conditions made stopping more difficult. Both Claimant and his supervisor admitted that the collision was an accident, not intentional conduct, and that Claimant was a good employee. He followed all of the proper reporting procedures both before, and after, the collision. In Claimant's 21 year railroad career, he had received no formal discipline nor any on-the-job injury.

The Carrier contends that it proved by substantial evidence that Claimant was careless in violation of Rule 1.6, as well as the other cited rule violations, and that it is historical and industry practice to dismiss an employee for this safety violation. It states that Claimant knew his shunts were not working, which requires him to stop at the crossings, but he proceeded to drive the truck with excessive speed toward the crossing so that he was unable to stop in time to avoid the collision.

The Organization argues that Carrier failed to meet its burden of proving that Claimant was careless in violation of Rule 1.6, and did not show that he engaged in repeated safety violations or was willful, flagrant or exhibited reckless disregard for safety, so that the penalty assessed was arbitrary, excessive and unwarranted. It notes that there were multiple intervening considerations that mitigate Claimant's culpability, including that his truck had a history of intermittent shunting issues which he communicated to his Manager, but it was not fixed promptly, placing Claimant in a higher risk situation and unable to stop

in time to avoid the collision, despite his traveling at a reasonable speed. The Organization points out that Claimant is admittedly an exceptional employee, with no prior discipline or record of any safety infractions, and that this unfortunate accident should not result in his dismissal, but, rather, qualifies him for MAPS policy training.

A careful review of the record convinces the Board that, while Claimant is primarily to blame for the resulting collision on September 8, 2019, Carrier has not proven that its action in knowingly sending him out in a defective vehicle (or timely making the necessary repairs) did not add to the risk. The issue presented in this case is whether, under the circumstances, Carrier's decision to issue a Level 5 dismissal for the proven violations is excessive and unwarranted. While it is true that Rule 1.6 - Conduct permits dismissal for any act of hostility, misconduct or willful disregard or negligence affecting the interest of the company or its employees, the Board is of the opinion that Carrier did not justify the imposition of the Level 5 dismissal in this case. Claimant clearly followed all of the rules and procedures for reporting both the defect in his truck and the accident, and accepted responsibility for his actions. The disciplinary notice issued to Claimant indicates that the dismissal is "based upon his current record," however Claimant's testimony that he has never received any formal discipline in his entire career was unrebutted, and reference to his "current record" unexplained. Claimant was admittedly an excellent employee and his evidence reveals that he has learned from this unfortunate incident, and would be proactive in the future if faced with similar circumstances.

Under the specific facts of this case, the Board is of the opinion that the dismissal was excessive, and that Claimant should be permitted to return to work without loss of seniority, but without any compensation.

AWARD:

The claim is sustained in accordance with the Findings. The Carrier is ordered to make the Award effective on or before 30 days following the date of the Award.

Margo R Newman

Margo R. Newman
Neutral Chairperson

Chris Bogenreif

Chris Bogenreif
Carrier Member

John Schlismann

John Schlismann
Employee Member

Dated: August 25, 2022

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