

PUBLIC LAW BOARD NO. 7660
AWARD NO. 188

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT RAIL CONFERENCE

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY [FORMER SOUTHERN
PACIFIC TRANSPORTATION COMPANY (WESTERN LINES)]

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. D. Jacob, by letter dated August 30, 2019, in connection with allegations that he failed to comply with Rule 1.13 Reporting and Complying with Instructions 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 M-1945S-501/1729869 SPW).
2. As a consequence of the violation referred to in Part (1) above, Claimant D. Jacob shall have his:

‘... Dismissal is (sic) 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 wage earnings. 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 bargaining for him as an employee of the Union Pacific Railroad and a member of the Brotherhood of Maintenance of Way Employees Division

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of the International Brotherhood of Teamsters. Claimant to 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. In short, we herein make the demand that the Claimant be made “whole” for any and all losses related to his dismissal from service.’ (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 33 years and worked as a Track Supervisor at the relevant time. Claimant received a Notice of Investigation dated August 5, 2019, advising him that he was charged with not submitting his July 25, 2019 FRA Track Inspection Reports on the same day the inspection was performed despite being advised of this requirement many times. The Investigation was held on August 12, 2019, and Claimant was served with a Notice of Discipline Assessed dated August 30, 2019, finding him guilty of the charge in violation of Rules 1.13 Reporting and Complying with Instructions, a critical rule violation. He was issued a dismissal based on his current status of MAPS Level 2. This claim protests such action.

The record reveals that Claimant has been a Track Inspector for a number of years, performing FRA mandated track inspections which require the timely filing of Track Inspection Reports within 24 hours of the time of inspection. There is no question that Claimant had been spoken to in the past about the timely filing of his Inspection Reports by his then MTM Manes-Ayala, who handled the issue through use of Carrier’s FTX

process, which is non-disciplinary. Claimant explained that he enters his Track Inspection reports at the end of the day from his home utilizing his company provided laptop with wi-fi access, and that he has had connectivity issues in the past which he has made his MTM aware of. On July 15, 2019, Claimant began being supervised by MTM Chu, upon the departure of Manes-Ayala. Around the same time, Carrier switched from a MiFi hotspot to an iPhone hotspot system for internet connectivity. Claimant indicated that he informed MTM Chu of his connectivity issues and that he was never trained on the new connectivity method.

Claimant explained that he attempted to enter his July 23, 2019 inspection reports on his laptop from home on July 24, but he had computer issues and could not connect to the internet from home that evening. He filed his reports the following morning, July 25, 2019 at 9:27 a.m. from his computer at work. MTM Chu removed him from service, and ultimately issued him the instant dismissal due to this late filing, relying on his MAPS status for an unrelated issue. There is no dispute that Chu did not utilize the FTX process. Nor did he ever inform Claimant that his job was in jeopardy as a result of this late filing. At the investigation, Chu admitted that he had not walked Claimant through the new electronic reporting system and did not train him on it, although agreeing that Claimant could have used such training. Despite being in this position for less than 2 weeks, MTM Chu relied upon Claimant's record indicating that he was at a MAPS 2 level in issuing him the dismissal without consideration of the cause of the late filing of the report. The record confirms that Claimant had no experience with the disciplinary process prior to July 5, 2018.

The Carrier contends that it proved by substantial evidence that Claimant was guilty of the charges and that, since he had been disciplined for the same thing 4 times in the prior 12 months, it acted in accordance with its MAPS policy in dismissing him from service. It asserts that Claimant was afforded all due process rights, that the remedy request is

excessive, and that no return to work is possible (nor remedy appropriate) since Claimant filed his retirement paperwork as of February 11, 2020.

The Organization argues that Carrier failed to meet its burden of proving that Claimant was at fault for the minor delay in submission of the Track Reports, which he turned in at the first possible moment when he had access to the internet and the on line reporting system. It notes that Claimant's prior connectivity issues, resulting in untimely filing, were treated appropriately by his then MTM through the FTX process, and he had no reason to believe that his new MTM would do otherwise, or that his job was in jeopardy under the circumstances. The Organization maintains that since Claimant was not trained on the new internet hardware system, and his connectivity issues at home were a direct result of this new system, he cannot be faulted for filing his Inspection Report on the morning of July 25 when he first got to work instead of the evening of July 24 from home. It contends that the penalty imposed was excessive and punitive, and that his eventual retirement status does not negate his entitlement to the requested remedy.

A careful review of the record convinces the Board that Carrier's imposition of the discipline of dismissal, under the specific circumstances of this case, was excessive, unreasonable and unfairly punitive. That is especially true in light of Claimant's years of service, and his forthright explanation of why he could not file his July 23, 2019 Inspection Report timely, despite trying to do so. It was unfortunate that Claimant's supervisor of less than 2 weeks saw fit to issue discipline when he was informed of Claimant's connectivity issue under the new internet system just instituted, rather than utilize the same non-disciplinary training tool as his former MTM. While a violation of Rule 1.13 can be considered a critical event under the MAPS system, it requires some element of flagrant disregard for the pertinent rules, which is missing in this case.

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In light of Claimant's years of service, the Board may have considered it appropriate to return Claimant to work without back pay. However, since Claimant retired in February, 2020, and returning him to service is no longer an option, a make whole remedy is still appropriate to address the violation found. See, e.g. Third Division Awards 31317, 5348. Therefore, we direct the Carrier to clear Claimant's service record of the dismissal and substitute a voluntary retirement in its place. Additionally, Claimant shall be given compensation for his monetary losses between July 25, 2019 and the effective date of his retirement, and the Carrier is directed to take the necessary steps to ensure that Claimant's retirement benefits reflect the results of this Award. See, Third Division Award 31317.

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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