

**PUBLIC LAW BOARD 7660**

**PARTIES     )     UNION PACIFIC RAILROAD COMPANY**  
                  )  
**TO            )            VS.**  
                  )  
**DISPUTE     )     BROTHERHOOD OF MAINTENANCE**  
                  )     **OF WAYEMPLOYES DIVISION –**  
                  )     **IBT RAIL CONFERENCE**

Public Law Board 7660 consisted of the regular members and in addition Referee Meeta A. Bass when award was rendered.

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

**1. The Carrier’s discipline (dismissal) imposed upon Mr. B. Kimball, by letter dated September 17, 2020, in connection with allegations that he failed to comply with Rule 1.6: Conduct – Dishonest; 1.13: Reporting and Complying with Instructions; SSI Item 10-I: Union Pacific Railroad Policies (Statement of Policy on Ethics and Business Conduct) and additionally 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-2048U-605/1743831 UPS).**

**2. As a consequence of the violation referred to in Part 1 above, Claimant B. Kimball shall now be reinstated to service and be made whole by compensating him for all wage and benefit loss suffered by him for his termination; that the alleged charges be expunged from his personal record; and that he be provided remedy as allowed for under the Agreement.”**

**FINDINGS:**

**The Board, upon the whole record and all the evidence, finds that:**

**The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as**

**approved June 21, 1934. The Board has jurisdiction over the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.**

**The Carrier employed the Claimant starting on August 23, 2004. As of July 15, 2020, and during other relevant periods, the Claimant was a System Tracker Unloader and REO member with Gang 8594, alongside four others. The designated reporting location for this Gang was Provo, Utah, and their primary duty involved unloading ties. However, there were no ties to unload on July 15, 16, and 17, 2020. In such situations, the Gang engaged in other tasks that ultimately benefited the workgroup long-term, often called "busy work." Two Gang members were actively involved in these alternate tasks. The Foreman permitted the Grievant not to report to the job site but instead remain ready and available to work. The Foreman conducted daily telephonic job briefings with the Claimant. Suspicion arose regarding the Claimant's work-related activities and compensation, and the Supervisor confronted one of the crew. This crew member indicated that he, the Claimant, and the Foreman worked from home but stood ready to report if work became available. The Carrier verified minimal work-related activity by the Grievant.**

**The Carrier issued a Notice of Investigation letter dated August 10, 2020, which stated: "...to develop the facts and determine your responsibility, if any, in connection with the below charge. On July 18, 2020, the Carrier gained knowledge that on the dates of July 15th, 16th, and 17th, while employed as a System Tracker Unloader, you allegedly were dishonest when you falsely claimed pay for hours you did not perform compensated service for the Carrier. This allowed you to receive pay that you were otherwise not entitled to. You were further dishonest when questioned about your absence by Manager Track Programs, Joel Russell. This is a possible violation of the following rules) and/or policy..."**

**After one postponement, the Carrier conducted the investigation hearing on September 1, 2020. By letter dated September 17, 2020, the Claimant received a discipline notice dated September 17, 2020, finding a violation of Rule 1.6: Conduct – Dishonest; 1.13: Reporting and Complying with Instruction; SSI Item 10-I: Union Pacific Railroad Policies (Statement of Policy on Ethics and Business Conduct) and additionally, 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...The Claimant was dismissed.**

**The Organization filed a claim by letter dated September 24, 2020, and the Carrier denied the same on November 27, 2020. The Organization advanced the appeal by letter dated November 30, 2020, and the Carrier denied the same by letter dated January 20, 2021. A formal conference was held with no resolution of the claim on February 12, 2021. By letter dated March 15, 2021, the Organization requested the Carrier to re-evaluate its position. By letter dated August 24, 2021, the Carrier maintained its position. The parties could not resolve this claim, which is before this Board for a final resolution.**

**The Board has reviewed the record developed by the parties during their handling of the claim on the property and considered evidence related to the following to make its determination of this claim:**

- 1) Did the Claimant receive a full and fair investigation with due notice of charges, opportunity to defend, and representation?**
- 2) If so, did the Carrier establish by substantial evidence the Claimant was culpable of the charged misconduct or dereliction of duty?**
- 3) If so, was the penalty imposed arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case?**

**The Organization argues the Claimant did not receive a fair hearing due to the consolidated hearing of the three Claimants involved in the incident. Investigatory hearings are consolidated for efficiency, fairness, and practicality. The issue to be weighed is whether consolidation of the three claimants' investigations prejudiced the rights of the Claimant herein, such as by making it more difficult for him to present a defense or by unfairly prejudicing the reviewing officer. After review of this record, this Board finds no prejudice.**

**Further, the Claimant admitted he received notice of the investigation apprising him of the charges and penalty. The investigation was held in a timely manner, and both the Claimant and his representative were given the opportunity to present evidence at the hearing. The Claimant testified he understood the charged rules. The finding of violation was based solely upon information brought forth during the hearing. The Board finds the Carrier provided the Claimant with a full, fair, and impartial hearing and afforded the due process required by the Collective Bargaining Agreement between the parties.**

The Organization argues the Carrier did not submit substantial evidence necessary to find the Claimant violated all the above-cited rules. This Board disagrees and finds the Carrier established by substantial evidence the Claimant was guilty of dishonesty. The Board is not persuaded there existed a past practice of remote work in these circumstances. The Board finds the penalty unreasonably harsh in the facts and circumstances of this case. The Board reinstates the Claimant with seniority and other benefits. No backpay is awarded. The Carrier shall classify this violation as a MAPS Training-2 with a thirty-six (36) month retention period from the award date.

**AWARD**

Claim sustained consistent with these findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

*Meeta A. Bass*

Meeta A. Bass  
Neutral Chairperson  
Dated: Sept. 28, 2023

*Chris Bogenreif*

Chris Bogenreif  
Carrier Member

Dated: September 29, 2023

*John Schlismann*

John Schlismann  
Organization Member

Dated: September 28, 2023