

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. R. Bracken, 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-604/1743832 UPS)

2. As a consequence of the violation referred to in Part 1 above, Claimant R. Bracken 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 on June 21, 1934. The Board has jurisdiction over the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.

The Claimant was assigned as the Tie Distribution Gang Foreman and he supervised a crew of four individuals. Their primary task was unloading ties for projection tie projects. However, when ties were unavailable, the crew engaged in various other tasks that ultimately benefited the overall workgroup, often called "busy work" at the worksite. There was a lack of ties to unload on July 15, 16, and 17, 2020. In response, the Claimant allowed two crew members to work from home with instructions to remain on standby and available for work if needed. The other two crew members were actively involved in these alternative tasks at the yard. The Claimant maintained daily individual telephonic job briefings with his crew while at home.

Concerns regarding the Claimant's work-related activities and compensation arose, leading the Supervisor to approach the crew members. A crew member indicated the Claimant and the other crew members were at home and prepared to report for duty if any work became available. The Carrier verified this by checking computer logs, which showed the Claimant's activity during morning and evening hours. Additionally, the two crew members working at the yard confirmed that at least one had regular communications with the Claimant throughout the day. The Claimant also testified that he performed other work-related duties in isolated locations. The Claimant admitted to visiting his father, who had Covid at a nursing home. The Claimant had accumulated twenty-nine (29) years of service with the Carrier at the time of dismissal.

The Carrier issued a Notice of Investigation letter dated August 10, 2020, and corrected August 12, 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 Distribution Gang Foreman, 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 investigation hearing was held 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. Indifference to duty or to the performance of duty will not be tolerated. The Claimant was dismissed.

By letter dated September 28, 2020, the Organization filed a claim, and the Carrier denied the same on November 27, 2020. The Organization appealed 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 reaffirmed its position and rejected the defense the Claimant was socially distancing himself due to the pandemic. The parties could not resolve this claim, and this matter 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 Board has carefully reviewed the record, the submissions, and the arguments of the advocates. The Organization contends that the Claimant did not receive an impartial hearing due to the joint hearing involving the three Claimants linked to the incident. The consolidation of investigatory hearings is intended to enhance efficiency, equity, and practicality. The key question to consider is whether the consolidation of the investigations for the three claimants negatively impacted the rights of the Claimant in question, possibly making it more challenging for them to mount a defense or unfairly influencing the reviewing officer. After a thorough

examination of the evidence, this Board has determined there is no evidence of bias or unfairness that disadvantaged the Claimant. Additionally, the Board concludes the Claimant was afforded a fair and unbiased hearing, as he was duly informed of the charges, the investigation was conducted promptly, and he was represented and given the opportunity to present and cross-examine witnesses.

The Board is not persuaded by the record a past practice of standing by and being prepared to work at home existed. This Board finds the Carrier established by substantial evidence the Claimant was guilty of dishonesty. However, the Board finds the penalty unreasonably harsh in the facts and circumstances of this case. The Claimant is reinstated with seniority and other benefits. The Board does not award any back pay. The Carrier shall record this violation as a MAPS-2 Offense.

AWARD

Claim sustained in accordance 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