

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

Public Law Board consisted of the regular members and, in addition, Referee Meeta A. Bass when this Award was rendered.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. C. Arbet, by letter dated November 16, 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); The How Matters Policy 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.’ 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-2148U-501/1749323 UPS).

2. As a consequence of the violation referred to in Part 1 above, Claimant C. Arbet shall now have the dismissal expunged from his personal record and 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 bargained for him as an employee of the Union Pacific Railroad and a member of the Brotherhood of Maintenance of Way Employees Division 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.’ (Employee’s Exhibit ‘A-2’).”

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 a flag foreman and worked a Z6 Schedule from Tuesday to Tuesday to provide track protection for contractors. He works generally from 5:00 to 5:30 am to 3:30 pm. At all relevant times the Claimant was working in Bakers City, Oregon. The Claimant worked on June 20, 2020 and released his track authority at 11:30 a.m. Witnesses stated Claimant informed them that he was going home, which the Claimant denied. The Claimant stated he was submitting time reports, reviewing rules, and completing other work.

His Managers had previously instructed the Claimant to complete a Respirator Fit and Hearing Test. His Manager acknowledged he did receive a text message from the Claimant stating he had an appointment scheduled. On July 21, 2020, the Claimant drove to West Colton, California, which was roughly 900 miles away from his work site to complete a Respirator Fit and Hearing Test. The testing was scheduled for July 22, 2020. The Manager explained the Fit Test could be scheduled on days off and he would pay accordingly for having the testing taken on days off. For payroll reporting for trainings or testing that occur in different locations the employee should list the milepost closest to the test location; the Manager acknowledged he did not instruct the Claimant regarding payroll. The Claimant

was compensated for a full day on July 20th, and 21st; the Claimant was not compensated for July 22nd.

On August 3rd, the Claimant reported for work and released his track authority at 12:52 p.m, and left. The Claimant testified there was a show and go policy on the half day of his schedule, which his Managers denied. The Claimant did not show up for work on August 4, 2020. The Claimant provided no explanation of his whereabouts on August 4, 2020. The Claimant did not receive compensation for August 3rd and August 4th.

The Carrier issued a Notice of Investigation letter dated August 11, 2020, stating: "...to develop the facts and determine your responsibility, if any, in connection with the below charged ...On 08/04/2020. the Carrier gained knowledge that on the dates of July 20th and July 21st while employed as a System Flagging Foreman, you allegedly were dishonest when you falsely claimed pay for hours you did not perform compensation service for the Carrier. This allowed you to receive pay that you were otherwise not entitled to. As well as. you also left work early on August 3 and were a No Call/No Show on August 4. This is a possible violation of the following rule(s) and/or policy: ..."

Following a postponement of the hearing, the investigation hearing occurred on November 4, 2020. Following the investigation hearing, the Claimant received a discipline notice dated November 16, 2020, finding a violation of 1.6: Conduct-Dishonest, 1.13 : Reporting and Complying with Instructions SSI Item 10-1: Union Pacific Railroad Policies (Statement of Policy on Ethics and Business Conduct) The How Matters Policy 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. These rules are incorporated herein as if fully rewritten. The Carrier dismissed the Claimant. At the time of his dismissal, the Claimant had 24 years of service.

The Organization filed a claim by letter dated January 14, 2020, and the Carrier denied the same on March 8, 2021. The Organization advanced the appeal by letter dated May 7, 2021, and the Carrier denied the same by letter dated June 29, 2021. A formal conference was held with no resolution of the claim on January 31, 2022. The Organization submitted a post-conference letter on February 23, 2022, requesting the Carrier re-evaluate their position or the matter would be progressed to the

National Railroad Adjustment Board. There was no change in the Carrier's position. This matter is before this Board for a final resolution of the claim.

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 Carrier contends the Claimant was afforded a full, fair, and impartial hearing. The Carrier argues the Claimant improperly reported and claimed compensated time for multiple dates (July 20, 21, and August 3 and 4, 2020) despite not performing work or service for the Company. Specifically, the Carrier asserts the Claimant was to be working with contractors, providing on-track safety when he left early on 7/20/20, did not work on 7/21/20, left early on 8/3/2020, and did not work on 8/4/20. The Carrier points to the Claimant's admission that he was not where he recorded time and could not recall his location or actions on August 4, 2020, as substantial evidence of the Claimant's guilt. According to the Carrier, this evidence established the Claimant reported time worked when he was not performing service in violation of the rules charged herein. The Carrier cites abundant arbitral precedents that support the premise that collecting payment for time not worked is theft and justifies dismissal.

The Organization contends the Carrier denied the Claimant his due process rights and a right to a fair hearing. According to the Organization, the Carrier's merging of prosecutorial and judgmental roles, as evidenced by Director's email, deprived the Claimant of a fair and impartial hearing and violated the Agreement. The Organization argues the Carrier failed to specify a precise charge as contemplated by Rule (48)(C) of the Agreement. The Organization surmises a review of this record does not establish the Claimant violated the charged rules; the Carrier failed to meet its burden of proof. The Organization argues the Claimant testified he was submitting time reports, reviewing rules, and completing other work after 11:30 to the end of his shift. The Organization argues the Claimant did as was instructed

when he left work on July 21, 2020, to travel to West Colton, California, to have his respirator fit/hearing test performed on July 22, 2020. In addition, the Carrier did not establish the Claimant left and/or improperly received compensation or otherwise due on August 3, 2020. The Organization acknowledges the admission of the Claimant that he was absent, with another flagging foreman present, to perform the required work of one (1) employee on August 4, 2020. The Organization argues there was no harm to the Carrier; the Claimant did not compensate himself for the date.

After a review of the transcript, on-property correspondence, and submissions of the advocates, the Board finds no procedural errors that would have prejudiced the Claimant. The Carrier highlighted four instances where the Claimant was absent from work yet still received compensation. However, upon review of the record and NOI, it was found that only two days of compensation while absent from the worksite were supported by evidence. The absence of the Claimant from work does not necessarily imply dishonesty unless there is evidence of falsification regarding the reason for the absence.

On July 20, the Claimant reported to work and left when his track authority was released, but before the shift had ended without authorization. The Claimant paid himself for a full day. On July 21, the Claimant drove to California for testing to be conducted on July 22. The Claimant paid himself for July 21 and received no compensation for July 22. There is insufficient evidence of the compensation that was actually owed to the Claimant for travel to and from the testing. More importantly, the Board notes that Claimant's reason for July 20th compensation was not related to travel for testing. Thus, while miscommunication was evident on July 21 and July 22, dishonesty was established for July 20, 2020.

On August 3, the Claimant reported to work and left when his track authority was released, but before the shift had ended without authorization. The Claimant's failure to report to work on August 4 constitutes non-attendance rather than deceitful conduct. The Claimant did not compensate himself for August 3 and August 4th. There was no evidence of dishonesty.

AWARD

Claim is denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not 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.

/s/ Meeta A. Bass

**Meeta A. Bass
Neutral Chairperson**

Jennifer McNeil

**Jennifer McNeil
Carrier Member**

Dated: April 17, 2024

John Schlismann

**John Schlismann
Organization Member**

Dated: April 17, 2024