

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. H. Cordova, by letter dated May 25, 2021, in connection with allegations that he failed to comply with Rules 1.6: Conduct – Quarrelsome; 1.6: Conduct – Insubordination; 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, without the Carrier having met its burden of proof and in violation of the Agreement (System File JN-2148U-404/1758061 UPS).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant H. Cordiva shall NOW be returned to service and ‘... now be made whole by returning Claimant to his former status, and compensating him for all wage and benefit loss suffered by him for this termination. We also request the alleged charges be expunged from his personal record.’ (Employes’ 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.

On April 19, 2021, the Claimant was assigned and working as a Track Inspector. On said date, the Manager of Track Maintenance received a request from the Signal Manager to have one of the employees transport a signalman. The Manager of Track Maintenance inquired if anyone could transport the signalman. The Claimant responded, "You're the f'ing manager; you need to f'ing manage it." The Manager then assigned the Claimant to transport. The Claimant walked out of the building and said, "I have fucking switches to inspect." The Manager checked back twenty minutes later to confirm the Claimant provided the transportation and learned he did not. Another signalman ended up providing the transportation.

There were other incidents of misconduct before the April 19 incident. On March 12, during a conference call, the Claimant told his Manager, "Your head is getting to f'ing big, and you should keep the new hard hat." His Manager had approximately six (6) months of experience. On March 25, the Claimant remarked the job was only worth the headache with the overtime during a meeting. On March 30, the Claimant stated that he may call off sick instead of doing work assignments. On April 14, the Claimant's text of a mountain lion treeing hound dogs inadvertently played during a meeting. The Claimant received no coaching, conversation, or any type of rebuke regarding his actions or comments. The Manager explained he did not believe the situation on these dates should be progressed to discipline.

The Claimant was subsequently removed from service pending a formal investigation following the April 19 incident.

The Carrier issued a Notice of Investigation letter dated April 22, 2021, stating: "... to develop the facts and determine your responsibility, if any, in connection with the below charged ... On April 19, 2021, at the location of Kremmling, Co, near Milepost 104.0, Moffat Subdivision, at approximately 07:30 hours, while employed as a Track Inspector, you allegedly have had numerous altercations since January by being confrontational on conference calls, safety meeting, and general incidences. As well

as you allegedly refused to follow instructions given by a supervisor and used derogatory language towards others and supervisor. This is a possible violation of the following rule(s) and/or policy: 1.6 Conduct – Quarrelsome 1.6 Conduct – Insubordinate ..."

The investigation hearing occurred on May 11, 2021. Following the investigation hearing, the Claimant received a discipline notice dated May 25, 2021, finding a violation of Rule 1.6 Conduct Quarrelsome, Rule 1.6 Conduct-Insubordinate, and Rule 1.6 Conduct-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.

The Organization filed a claim by letter dated May 26, 2021, and the Carrier denied the same on July 21, 2021. The Organization advanced the appeal by letter dated August 5, 2021, and the Carrier denied the same by letter dated September 16, 2021. A formal conference was held with no resolution of the claim on January 13, 2022. The Organization submitted a post-conference letter on January 19, 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?**

Rule 1.6 is incorporated herein as if entirely rewritten.

The Carrier contends the evidence established the Claimant was both quarrelsome and insubordinate in violation of Rule 1.6. The Carrier explains that every example

of misconduct in the record speaks to unacceptable disrespect towards a supervisor. The evidence established the Claimant's remarks were far more than "shop talk" and did not excuse or condone the Claimant's egregious conduct. The Carrier argues the Claimant's comments towards his supervisor were quarrelsome and insubordinate statements, and his conduct amounted to acts of hostility affecting the interests of the company or its employees. Further, the Claimant failed to comply with instructions but spewed profanity, walked away, and performed tasks other than his new assignment. The Carrier maintains the discipline was warranted and commensurate with the offense.

The Organization contends the Carrier failed to prove a violation of work rules, citing the use of profanity by the Claimant as everyday workplace discourse. They also claim there was no clear order given in a chaotic workplace on that particular day. The Organization argues the penalty imposed was overly severe and asserts the Claimant was denied a fair hearing due to the admission of his disciplinary record. Additionally, the Organization highlights the Carrier's failure to follow its MAPS Policy by dismissing the Claimant without warning or training. The Organization claims the evidence established there was no coaching or counseling provided for the alleged incidents. It points out that the charging Manager believed only the April 19th offense warranted discipline. Given the absence of prior corrective action, the Organization views the discipline as punitive rather than corrective.

The Board finds there are no significant procedural errors evident in the record. The Board also finds the evidence of record substantiates a violation of Rule 1.6. The Claimant displayed both quarrelsome and insubordinate behavior as alleged. Contrary to the Organization's position, disrespectful, belligerent behavior that tends or is intended to undermine the authority of a supervisor is a dischargeable offense and can skip progression. However, the Board finds, in this instance, the dismissal penalty to be excessive.

One critical aspect the Board considered in determining the reasonableness of the penalty is the Manager's failure to address the disrespectful behavior directed towards him before the April 19 incident. By not addressing the behavior initially, the Manager effectively condoned it, thereby enabling its escalation and perpetuation within the workplace. His failure to intervene in a timely manner

makes it unreasonable for the Manager to later complain about such misconduct in support of a dismissal.

In addition, there was no evidence of record the Manager gave a clear directive, that is, that failure to comply with the directive may result in discipline, to support a dismissal.

In light of these considerations, the Board concludes that while the Claimant's behavior was unacceptable, the dismissal penalty is disproportionate given that the Manager failed to manage, i.e., address the behavior and give a clear directive. Thus, this Board reinstates the Claimant with all loss benefits with a Map 1 Policy violation and no back pay.

AWARD

Claim sustained in part.

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.

/s/ Meeta A. Bass

Meeta A. Bass
Neutral Chairperson

Jennifer McNeil
Jennifer McNeil
Carrier Member
Dated: April 17, 2024

[Signature]
John Schlismann
Organization Member
Dated: April 17, 2024