

PUBLIC LAW BOARD 7660

PARTIES)	UNION PACIFIC RAILROAD COMPANY
)	[FORMER SOUTHERN PACIFIC
)	TRANSPORTATION COMPANY
)	(WESTERN LINES)]
)	
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. M. Hogue, by letter dated July 28, 2021, in connection with allegations that he failed to comply with Rule 1.6: Conduct – Dishonest; 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-2145S-503/1764188 SPW).

2. As a consequence of the violation referred to in Part 1 above, Claimant M. Hogue shall now have the discipline of 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 is 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.' (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 works as a track foreman from 6:00 am to 2:30 pm. On June 7, 2021, the Claimant left work at noon. The Claimant, who does the payroll for the work gang, reported his working hours as a full day. On June 8, 2021, his Manager confronted the Claimant about the discrepancy, coached him on timekeeping and payroll, and further instructed the Claimant to correct his hours for June 7th. The Claimant encountered difficulties rectifying the error despite attempting to do so and notified his Manager on the same day. His Manager confirmed that the Claimant had made him aware of the technical issues he had experienced. Neither his Manager nor the Claimant took further action, and the payroll was automatically approved.

The Carrier issued a Notice of Investigation letter dated June 22, 2021, stating: "... to develop the facts and determine your responsibility, if any, in connection with the below charged ... On 06/08/2021, at the location of Stockton, CA, near Milepost 92.5, Oakland Subdivision, at approximately 12:00 hours, while employed as a Frmn Track, you allegedly failed to change your work hours as instructed by your Manager, thus being paid for hours not worked. This is a possible violation of the following rule(s) and/or policy: 1.6: Conduct - Dishonest ..."

The investigation hearing occurred on July 8, 2021. Following the investigation hearing, the Claimant received a discipline notice dated July 28, 2021, finding a violation of Rule 1.6 Dishonesty 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 September 26, 2021, and the Carrier denied the same on November 23, 2021. The Organization advanced the appeal by letter dated January 22, 2022, and the Carrier denied the same by letter dated March 23, 2022. The parties held a formal conference with no resolution of the claim on July 7, 2022. The Organization submitted a post-conference letter on August 8, 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 there was no double jeopardy; the Claimant was disciplined for failing to update his payroll to reflect his time reporting. The Carrier argues the evidence, which includes the Claimant's admission to leaving work early while claiming payment for the full day, justified dismissal due to deliberate and severe misconduct. The Carrier cites arbitration precedents that support the view that receiving payment for unworked time constitutes theft, warranting dismissal and upholding ethical standards within the employer-employee relationship. The Carrier suggests the Claimant failed to adjust reporting despite being experienced in timekeeping. The Claimant received all due process rights under the Collective Bargaining Agreement, and there were no procedural flaws significant enough to invalidate the imposed discipline.

The Organization contends the Carrier erred by expanding its analysis beyond the details specified in Rule 45(a), which confines both the notice of the charge and the

scope of the investigation, specifically June 8, 2021. All allegations regarding June 7, 2021, were addressed by his Manager on June 8, 2021, leaving any further discipline subject against the Claimant to double jeopardy. The Organization argues the Carrier provided no evidence to support its allegation the Claimant was dishonest or in violation of any Carrier rule. The Organization points out the Manager testified there was no evidence of intentional deceit or attempted theft by the Claimant. Thus, the Organization claims the Carrier disciplined the Claimant without cause.

Upon the review of the record, the Board finds there is no substantial evidence to support the allegations of dishonesty or theft against the Claimant on June 8, 2021. While discrepancies between logged work hours and actual work performed can be evidence of time theft, it does not inherently imply dishonesty or intent to steal from the company. The Claimant's reporting to his supervisor of his inability to correct the inaccurate hours suggests a lack of willful misconduct.

His Manager, who was tasked with addressing the issue, confirmed during the hearing he had no evidence suggesting the Claimant's intentions were deceitful or aimed at defrauding the company or of a pattern of misreporting. Furthermore, his Manager acknowledged he did not provide the Claimant with explicit instructions on rectifying the time-reporting error once he reported his inability to correct it. While employees must adhere to company policies and accurately report their time, it is equally essential to recognize instances where errors may occur inadvertently, without malicious intent. Thus, the Board finds insufficient evidence to substantiate the Claimant engaged in dishonest or fraudulent behavior. The incident appears to be an isolated case of oversight rather than intentional misconduct. Therefore, the Board sustains the claim.

AWARD

Claim sustained. This Award is in accordance with Rule 45 (b), which states if the charge against the employee is not sustained, his record will be cleared, and he will be compensated for net wage loss that may have been suffered by him as a result of the charge for which hearing was held.

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

John Schlismann

John Schlismann
Organization Member
Dated: April 17, 2024