

PARTIES)	UNION PACIFIC RAILROAD COMPANY
)	
TO)	VS.
)	
DISPUTE)	BROTHERHOOD OF MAINTENANCE
)	OF WAY EMPLOYES 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. T. Baker, by letter dated December 9, 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; without the Carrier having met its burden of proof; and in violation of the Agreement (System File A-2148U-006/1768663 UPS).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant T. Baker shall now be returned to service and ‘... be made whole by compensating him for all wage and benefit loss suffered by him for his employment termination, any and all expenses incurred or lost as a result, and the alleged charge(s) be expunged from his personal record. Claimant must also be made whole for any and all loss of Railroad Retirement month credit and any other loss.’ (Employees’ 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 August 5, 2021, the Manager issued a memo to all employees regarding completing vacation forms two weeks in advance. On September 27, 2021, the Claimant informed the Manager via text about his grandfather's hospice care, potentially requiring time off; his Manager responded to the text messages. The Claimant returned to work on October 7, 2021, and his Manager was onsite. The Claimant did not have any further discussions with his Manager regarding his grandfather or officially submit a vacation leave form. The Claimant was absent from work from October 8 to October 12, 2021; the Claimant stated he thought his absence was authorized based on the text communications. His Foreman, in his investigation hearing, testified he had the understanding the Claimant was on vacation leave due to these circumstances.

The Manager recalled receiving a message from the Claimant stating he may or may not be late due to his flight getting out on time and making it back home to make it to work. The Claimant explained how his travel interrupted his return to work on October 19th and 20th and how his wife contacted his Foreman and coworker. The Claimant admitted he did not report to work on October 19-20, 2021.

The Gang Foreman is responsible for payroll. Payroll closed on October 19, 2021, and employees are paid on the 10th and 25th. The payroll records for the dates in question indicate the Foreman paid the Claimant for regular and overtime hours and per diem despite the Claimant's absence from work. The Claimant admitted being absent but claimed his time should have been entered as vacation leave. His Foreman accepted full responsibility for the payroll errors. According to the Manager, there was no evidence of dishonesty by the Claimant. His dishonesty was assumed due to the payroll.

The Claimant was removed from service and learned of payroll discrepancies from the charge letter. The Carrier issued a Notice of Investigation letter dated October 28, 2021, stating: "...to develop the facts and determine your responsibility, if any, in connection with the below charged. On 10/19/2021 the Carrier gained knowledge that you allegedly were dishonest when you accepted payroll for time not worked for

the dates of October 8 through 12th, October 19th, and 20th. This is a possible violation of the following rule(s) and/or policy: Rule 1.6: Conduct - Dishonest Rule

1.6: Conduct - which reads: "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. ..."

Following a postponement, the investigation hearing occurred on November 19, 2021. Following the investigation hearing, the Claimant received a discipline notice dated December 9, 2021, finding a violation of 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. This rule is incorporated herein as if entirely rewritten. The Carrier dismissed the Claimant.

The Organization filed a claim by letter dated December 17, 2021, and the Carrier denied the same on February 8, 2022. The Organization advanced the appeal by letter dated February 15, 2022, and the Carrier denied the same by letter dated April 5, 2022. A formal conference was held with no resolution of the claim on April 14, 2022. The Organization submitted a post-conference letter on April 22, 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 substantial evidence supports the charges, the hearing was fair, the dismissal was warranted, and commensurate with the severity of the offenses. The Carrier argues the facts of the record show that the Claimant claimed

payment for days when he was not at the job site location and was not performing services for the Carrier. The Carrier asserts these facts as outlined in its timeline of

events and establishes that the Claimant knowingly claimed payment that he otherwise was not entitled to in violation of Rule 1.6. The Carrier argues the Claimant engaged in deceptive behavior when he failed to submit his official leave request or discuss the nature of his leave with his Manager. The Carrier maintains a zero-tolerance policy concerning cases of dishonesty.

The Organization contends the Claimant neither entered his own payroll information nor requested anyone else to input fictitious service hours or cover for his absences. The Organization argues if the Claimant's Foreman had accurately recorded "vacation" hours due to these circumstances instead of "straight-time" hours on the relevant dates, this situation would have been avoided. The Organization asserts the evidence, consisting of written statements from the Claimant's coworkers confirming his absence on those dates, remains undisputed by both parties, and the type-written statement of his coworker provided a more detailed explanation of the events. Furthermore, the Organization emphasized that if the Foreman had entered the correct designation for hours, the Claimant would have avoided finding himself in this predicament. The Organization maintains the Claimant did not engage in dishonest behavior as alleged.

The Board finds no significant procedural errors. The Board finds no evidence of record to establish the Claimant accepted payroll for time not worked for October 8 through 12th, October 19th, and 20th. The Board also finds no evidence of dishonesty or collusion with the Foreman, who was in charge of accurately reporting the payroll to substantiate the charge. Thus, the Carrier has failed to meet its burden that the Claimant violated Rule 1.6: Conduct - Dishonest and Rule 1.6: Conduct - which reads: "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."

AWARD

Claim sustained. The Carrier should adjust all time records to accurately reflect leave used.

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