

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

**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. Onken, 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 and disparate; without the Carrier having met its burden of proof; and in violation of the Agreement (System File A-2248U-001/1769858 UPS).**
  
- 2. As a consequence of the violation referred to in Part 1 above, Claimant M. Onken 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.’”**

**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 had been with the Carrier for nine years when the incident occurred. The Claimant was the Foreman for Gang 9528 and oversaw timekeeping and payroll. On October 19, 2021, the Manager conducted an on-site investigation following reports of a worker being paid for hours not worked. The Claimant entered the time for payment of daily wages, overtime, and per diem for his Assistant Foreman for October 8, 2021, through October 12, 2021, and again on October 19, 2021, through October 20, 2021. There is no dispute the worker was absent from these days. Corporate Audit confirmed the worker had been paid \$2,700.41 in regular and overtime pay for periods when he was absent from work. On October 19, 2021, the Manager scheduled a dinner with the gang. The worker did not attend. When questioned by the Manager, the Claimant informed his Manager he was tired and opted not to attend. The worker was absent from the job site on October 19th and 20th, 2021.**

**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 submitted payroll for another employee for the dates of October 8 through 12th, October 19th, and 20th, when the employee was on not actually at the job site working. 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 January 17, 2022, and the Carrier denied the same on March 7, 2022. The Organization advanced the appeal by letter dated March 9, 2022, and the Carrier denied the same by letter dated April 28, 2022.

A formal conference was held with no resolution of the claim on May 5, 2022. The Organization submitted a post-conference letter on May 5, 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 Conduct is incorporated here as if entirely rewritten.**

The Carrier contends the Claimant was afforded representation and given ample opportunity to scrutinize all evidence, cross-examine Carrier's witnesses, and present his own witnesses. The Carrier claims substantial evidence supports the charge the Claimant engaged in dishonest behavior by compensating another worker for daily wages, overtime, and per diem payments despite the latter's absence from the job site on seven occasions, thereby violating Rule 1.6. The Carrier argues that the Claimant qualified as a foreman on November 23, 2015, and was aware of his responsibility to accurately track the crew's time. The Claimant neglected his responsibility to record time and verify worker presence accurately.

The Carrier contends the Claimant's actions were not merely clerical errors but deliberate breaches of responsibility. According to the Carrier, the Claimant had the duty to accurately input, review, and verify time records before submission. Yet, he neglected these duties to the detriment of the Carrier and coworker. The evidence indicates the Claimant was aware of the worker's absence from the site, as no vacation request forms were filed. The Carrier emphasizes that dishonesty constitutes a grave offense warranting dismissal. The Organization contends the Carrier failed to provide the Claimant with a fair hearing and due process rights when the Carrier amended the Notice of Investigation to include October 7, and the decision to impose discipline was made by someone other than the hearing officer.

The Organization asserts the Carrier failed to meet its burden of proof due to its failure to prove the Claimant's guilt, as there was no rule violation on October 7, 2021, and the alleged dishonesty regarding payroll discrepancies lacked evidence of intentionality or collusion. The Organization argues the evidence supports the payroll discrepancy stemmed from oversight when the Claimant used a bulk updater to process his workgroup's payroll, and the mistake went unnoticed until after payroll approval by the Manager. The Organization points to the Manager's testimony, who testified there was no evidence of collusion between the Claimant and the other worker. Additionally, the Organization emphasizes the personal crises the Claimant faced at the time, COVID and caring for a special needs child, which may have contributed to the error. The Organization argues that the vacation forms were not mandatory in emergencies, and the Manager knew the other worker's grandfather had entered hospice. The Organization suggests the Claimant had no apparent motive for deliberately causing the payroll error. The Organization maintains the Carrier failed to meet its burden of proof, and the claim should be sustained.

After carefully reviewing this record, the Board finds no material prejudice. The Board finds the Carrier has demonstrated a violation of Rule 1.6, meeting the requisite burden of proof of substantial evidence, defined as relevant evidence that a reasonable individual would consider sufficient to support a conclusion. This investigation commenced when a coworker raised concerns regarding the alleged payroll receipt by a worker not on duty. The Claimant, responsible for timekeeping, had no vacation forms on file for said worker and admitted to not verifying the availability of vacation days for the worker in question. Additionally, an incident occurred during a dinner where the Manager queried the worker's whereabouts,

receiving an answer suggesting fatigue, corroborating deception. Despite the Claimant's dispute of this testimony, no supporting witnesses were presented to substantiate his version of events. Moreover, the Board notes the adverse impact of the Claimant's actions on the Company and another employee now facing termination. The Board finds the Carrier's actions align with established policy and are commensurate with the severity of the offense.

**AWARD**

**Claim denied.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant not be made.**

*/s/ Meeta A. Bass*

**Meeta A. Bass  
Neutral Chairperson**

*Jennifer McNeil*  
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**Jennifer McNeil**  
**Carrier Member**  
**Dated:** April 29, 2024

*John Schlismann*  
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**John Schlismann**  
**Organization Member**  
**Dated:** April 29, 2024