

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. D. Garcia, by letter dated October 12, 2021, in connection with allegations that he failed to protect his employment on a full time basis through frequent or pattern layoffs and/or failure to report for service between on 8/24/2021 and 8/24/2021, was excessive, arbitrary and disparate; without the Carrier having met its burden of proof; and in violation of the Agreement (System File M-2145S-505/1767999 SPW).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant D. Garcia shall now have the discipline of dismissal ‘... expunged from his personal record. Claimant 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.' (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.

The Carrier hired the Claimant on February 13, 2012. At all relevant times herein, the Claimant was working and assigned as a welder. On August 24, 2021, the Carrier issued the Claimant a Third Offense Violation of the Attendance policy for failure to report to duty without properly notifying his supervisor. On the night of August 23, 2021, the Claimant had his cell phone and wallet stolen while doing laundry. The Claimant could not email his Manager because the app utilized to log in to Carrier email was on his stolen phone. The Claimant contacted Welder Helper at 4:42 A.M. on August 24, 2021, via Facebook messenger from his laptop and requested that he inform their Manager that he would be unable to report on account of his wallet and phone being stolen. The Claimant did not attempt to email his Manager or come to work to notify him that he needed to go to the DMV to get a new license. The Claimant filed an insurance claim to receive a new phone and had his driver's license replaced on August 24, 2021. On August 25, 2021, the Claimant reported to work and informed his Manager of his situation. The Claimant was allowed to work and continued to do so until being notified by letter dated September 3, 2021, to attend an investigation relating to an alleged Third Attendance Alert Violation. Previously, the Claimant signed two waivers for attendance violations on May 27 and July 14, 2021. The Claimant had no record of discipline outside of the attendance policy violations.

The Carrier issued a Notice of Investigation letter dated September 3, 2021, stating: "...to develop the facts and determine your responsibility, if any, in connection with your alleged violation of the Union Pacific Railroad Attendance Policy...you allegedly failed to protect your employment on a full-time basis through frequent or pattern layoffs and/or failure to report for service from 12/16/2021 through 12/20/2021. If such charges are proven, you may be assessed a THIRD OFFENSE ATTENDANCE violation of the Union Pacific Railroad Attendance Policy..."

The investigation was held on September 23, 2021. The Carrier dismissed the Claimant from service for a violation of Union Pacific Railroad Policy, Third Offense. The Organization filed a claim by letter dated December 6, 2021, and the Carrier denied the same on January 25, 2022. The Organization advanced the appeal by letter dated March 23, 2022, and the Carrier denied the same by letter dated May 5, 2022. A formal conference was held with no resolution of the claim on July 7, 2022. The Organization submitted a post-conference letter on September 20, 2022, requesting the Carrier re-evaluate their position or the matter would be progressed to the National Railroad Adjustment Board. The Carrier's position remained unchanged by a letter dated October 6, 2022. This matter is before this Board for a final resolution of the claim.

The Carrier contends the Claimant was afforded a fair and unbiased hearing by providing notice of charges, opportunity for defense, and representation. The Carrier asserts the Claimant received a warning letter for an unauthorized absence on May 21, 2021, and was reminded of his duty to fulfill his work responsibilities. Subsequently, the Claimant had three more attendance incidents between May and August 2021. The Carrier addressed the Claimant's attendance issues through individual meetings on April 28, 2021, and July 9, 2021. The Carrier asserts there is no dispute the Claimant did not report to work on August 24, 2021, and his Manager did not authorize his absence. The Claimant's acknowledgment of the situation negates any procedural arguments.

The Organization argues the discipline imposed on the Claimant was punitive, arbitrary, and abused managerial discretion. The Organization stresses that mitigating circumstances existed, referencing the personal and situational challenges faced by the Claimant. The Organization argues that despite recent attendance problems, the Claimant, with nine years of service, had a clean disciplinary record. The Organization explains the facts and circumstances surrounding the waivers, mainly due to his Manager's instructions not to report to work if he is late. The

Organization also points out that the Claimant consistently communicated absences and tardiness with their Manager before starting work.

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. There is substantial evidence the Grievant violated the Carrier's Attendance Policy. Discipline was assessed in accordance with the Carrier's Policy. However, in this instance, the penalty resulting with strict application of the policy is harsh and not commensurate to the offense. The Grievant had a ten-year tenure with the Carrier and maintained a clean disciplinary record outside of recent attendance issues. These attendance issues arose due to personal family matters, which may have impacted the Grievant's ability to adhere to work schedules. Moreover, there was at least an effort to communicate with his Manager regarding the circumstances.

While attendance is essential to employment, considering the Grievant's tenure, record, and recent attendance issues, the termination is disproportionate, harsh, and not commensurate with the offense. The Board reinstates the Grievant with health insurance, seniority, other benefits, and no back pay. Additionally, the Grievant is assessed an Attendance 2 Violation for this incident, which shall run concurrently with the Attendance 2 violation issued on July 14, 2021. No MAPS violation is assessed.

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 29, 2024

John Schlismann

John Schlismann
Organization Member
Dated: April 29, 2024