

<b>PARTIES</b>	)	<b>UNION PACIFIC RAILROAD COMPANY</b>
	)	<b>Former Southern Pacific</b>
	)	<b>Transportation Company</b>
	)	<b>(Western Lines)</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. J. Valle, by letter dated October 22, 2021, in connection with allegations that he failed to comply with Rule 1.6: Conduct – Immoral; 1.6: Conduct – Discourteous; SSI Item 10-1: Union Pacific Railroad Policies; ‘The How Matters Policy’; ‘Equal Employment Opportunity/Affirmative Action and Related Policy Directives’ and Rule 1.6 Conduct which 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 M-2145S-506/1768751 SPW).

2. As a consequence of the violation referred to in Part 1 above, Claimant J. Valle 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.**

**On September 2, 2021, the Claimant was working and assigned as a Track Foreman, with Arevalo's Landscape employees; Arevalo Landscape a vegetation and homeless debris contractor. Due to the nature of the location, there are no restrooms. The Claimant had to urinate and rather than face the opposite direction of the contractors, the Claimant urinated facing the contractors. The contractors refrained from commenting on the incident at that time, attributing their silence to a prior altercation which occurred on September 1, 2021. The contractors reported the Claimant had exposed himself to the contractors and made inappropriate comments about their bodies and sex lives during a previous shift on UP premises. A Corporate Audit ensued, and the findings substantiated the urination incident and found the sexual comments to be unsubstantiated.**

**The Carrier issued a Notice of Investigation letter dated September 23, 2021, stating: "...to develop the facts and determine your responsibility, if any, in connection with the below charge. On 09/20/2021, the Carrier gained knowledge that you allegedly were in violation of Carrier rules and policies when you were involved in an altercation with a flagging contractor from Arevalo Landscape that allegedly led to workplace harassment. If proven, is a possible violation of the following rule(s) and/or policy: 1.6: Conduct – Immoral. 1.6: Conduct – Discourteous, SSI Item I 10-1: Union Pacific Railroad Policies "The How Matters" Policy, "Equal Employment Opportunity/Affirmative Action and Related Policy**

**Directives" 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. Indifference to duty or to the performance of duty will not be tolerated..."**

**The investigation hearing occurred on October 3, 2021. Following the investigation hearing, the Claimant received a discipline notice dated October 22, 2021, sustaining the charges. The Carrier dismissed the Claimant. The Organization filed a claim by letter dated December 20, 2021, and the Carrier denied the same on February 4, 2022. The Organization advanced the appeal by letter dated April 5, 2022, and the Carrier denied the same by letter dated May 24, 2022. A formal conference was held with no resolution of the claim on July 7, 2022. The Organization submitted a post-conference letter on October 31, 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 Rules and Policies are incorporated here as if entirely rewritten.**

**The Carrier contends that urination in front of coworkers is a violation of policy and work standards, even upon the first offense. The Claimant's actions of exposing himself to urinate in the directions of subcontract employees were in clear violation of Rules 1.6 Conduct, The Carrier's EEO Policy, and the Ethics and Business Conduct Policy. Regarding the EEO policy and this specific case, Union Pacific prohibits discrimination or harassment based on a person's race, color, national origin, and ancestry. Moreover, the EEO policy prohibits offensive and/or threatening comments or conduct that place another person in a threatening or**

offensive situation. Even remarks or conduct that are made without the presence of another person are prohibited. Carrier's EEO/AA Policy makes it clear that any offensive comments or gestures toward another person because of gender, race, or other protected status will not be tolerated. Exposing oneself and urinating in the direction of others is clearly in violation of this policy. The discipline imposed was warranted.

The Organization contends the Claimant was prejudiced when the proper Carrier official designated by the Carrier's EEO Policy to implement the EEO Policy did not make any determination relative to the Claimant's case; that the subcontractors' inconsistent account of events renders their statements not credible; and, there is no evidence in this record the Claimant intended to offend any contractor when relieving himself on September 20, 2021. Moreover, witnesses did not have a consistent account of events, all the events of the date under review are questioned. It was established these comments were unsubstantiated after an initial investigation into the matter; the driving force behind these charges was angry with the Claimant from the day prior and utilized this alleged incident as a method of retaliation for an unrelated incident occurring on September 1, 2021. Lastly, the Organization argues that even if the Carrier did provide a fair and impartial hearing and did meet its burden of proof, the discipline imposed in this case when no restrooms were otherwise available to the Claimant was arbitrary, excessive, and improper.

After reviewing the transcript, on-property correspondence, and the submissions of the advocates, this Board finds the Claimant was afforded a fair hearing and due process. The Board finds the Carrier has met its burden of proof to establish a violation of the charges. In the case at hand, the act of urinating in the direction of others, particularly in a manner that could be perceived as offensive or harassing, is unacceptable. While the Organization raises concerns about procedural irregularities and the credibility of witnesses, all three witnesses confirmed the Claimant did urinate in the direction of the contractors. Regardless of any procedural shortcomings, the fundamental issue remains the Claimant's egregious behavior and its impact on the workplace. The absence of restroom facilities may present mitigating circumstances, but it does not absolve the Claimant of responsibility for his actions. Such behavior violates fundamental norms of decency and contravenes established policies and ethical standards to foster a respectful work environment. Urinating in the direction of others constitutes a severe breach of workplace norms and policies when done in an offensive and harassing manner, and should generally not be disturbed.

**This Board finds the penalty of dismissal is harsh when considering the facts and circumstances of this claim. Thus, the Claimant is reinstated with health insurance, seniority, other benefits, and no back pay. The Claimant is assessed a Map 1 violation with a six month retention period.**

**AWARD**

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

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