

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. J. Rodriguez, by letter dated December 17, 2021, in connection with allegations that he failed to comply with Rule 1.6 – Negligent, Rule 74.5: Seat Belts 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-2245S-503/1771464 SPW).

2. As a consequence of the violation referred to in Part 1 above, Claimant J. Rodriguez 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.' (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 Carrier hired the Claimant in 1997, and at the time of this incident, the Claimant had twenty-three (23) years of service. The Claimant was assigned to and working as a track inspector at Santa Teresa, New Mexico. He was to inspect switches and mainline tracks for any defects or damage on the switches or frogs. On November 16, 2021, the Director of Track Maintenance and General Director was traveling in an unmarked vehicle near Milepost 1279. The Director observed the Claimant standing outside on the running board of his truck and traversing the track, fueling tracks 6 through 12. According to the Director, the Claimant had his door open, seat belt not on, standing outside, holding onto the steering wheel with one hand. The Director did not have a company radio to contact the Claimant. The Director stated once the Claimant saw them, the Claimant stopped and got into his car. The Director could not gauge the Claimant's speed. The Director approached him at the Fueling Track, Fuel Track 8, approximately two miles away. The Director had the Claimant release his track authority and get out of the vehicle. The Director told him he was at Level 2 on MAPS and was terminated for a seatbelt violation.

The Claimant testified he was wearing his seatbelt and denied he was standing on the running board of the hy-rail vehicle while the vehicle was in motion traversing the main track. The Claimant acknowledged his door was open because he is watching for frog areas and provided an explanation of the inspection process, which includes painting the switch point while traversing the track. The Claimant stated he was traveling two to three miles per hour and stopped at each switch to inspect. The General Director did not testify during the course of these proceedings.

The Carrier issued a Notice of Investigation letter dated November 19, 2021, stating: "...to develop the facts and determine your responsibility, if any, in connection with the below charged... On 11/16/2020, at the location of Santa Teresa, NM, near MP 1279.0, of the Lordsburg Subdivision at approximately 10:00 hours, while employed as a Track Supervisor, you allegedly were negligent when you were witnessed standing on the running board of your hy-rail vehicle while the vehicle was in motion traversing the main track. If proven, this is a possible violation of the following rule(s) and policies: 1.6: Conduct - Negligent, 1.6: Conduct - Careless of Safety, 74.5: Seat Belts and that part of Rule 1.6 Conduct which reads: "Any act of hostility, misconduct, or willful disregard 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 December 1, 2021. Following the investigation hearing, the Claimant received a discipline notice dated December 17, 2021, sustaining the charges. The Carrier dismissed the Claimant. At the time of his removal, the Claimant was on a MAPS Training 2, disciplinary retention status. The Organization filed a claim by letter dated February 14, 2022, and the Carrier denied the same on April 15, 2022. The Organization advanced the appeal by letter dated June 8, 2022, and the Carrier denied the same by letter dated July 26, 2022. A formal conference was held with no resolution of the claim on August 23, 2022. The Organization submitted a post-conference letter on September 19, 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 by letter dated October 6, 2022. 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 are incorporated herein as if entirely rewritten. Specifically, 74.5 Seat Belts:

All vehicle occupants must use Seat Belts where provided. This includes:

- **Company vehicles.**
- **Privately owned vehicles used on company business.**
- **Leased, rented, or contract vehicles.**
- **Hy-rail vehicles on and off the rail.**
- **Operating material handling or utility-type vehicles, if so equipped (forklifts, mobile cranes, mules, utility trucks, etc).**
- **Engineering work equipment as outlined in "Engineering Seat Belt Matrix"**

Seat Belts must:

- **Be inspected prior to use.**
- **Not be removed from vehicles to avoid use.**
- **Be placed immediately, or the vehicle removed from service if missing or defective.**
- **Driver must not move a vehicle until- until assured all passengers are Seated and have their Seat Belts fastened in the proper restraining position.**

Exception: Seat belt use is not required if vehicle is not exceeding 5 mph and vehicle used during the task of:

- **Inspecting cars.**
- **Coupling air hoses.**
- **Changing brake shoes.**
- **Setting by setting a hy-rail on or off the track.**
- **Lining switches or applying/releasing handbrakes during continuous switching slash yarding operations.**

The Carrier contends the Claimant received proper due process, and there were no procedural issues in handling the claim. The Carrier argues the Organization did not cross-examine the Charging Manager while questioning the credibility of the Claimant's testimony. The Carrier asserts the evidence demonstrates the Claimant's violation of the specified regulations. Specifically, it highlights the Engineering Seat Belt Matrix, noting the absence of exemptions for seatbelt use concerning hy-rail vehicles, except when getting on and off the rail. The Carrier references testimony indicating the Claimant's familiarity with the rules through his annual safety certification exams. Furthermore, it emphasizes the Claimant's prior signing of multiple waivers for MAPS Training, contributing to his dismissal under the progressive MAPS discipline policy. The Carrier maintains the dismissal was justified and aligned with company policy and arbitration precedents.

The Organization contends the Carrier breached the Claimant's right to a fair hearing by omitting a potential corroborating witness for the Director's testimony. The conflicting accounts in the records highlight the need for the Carrier to have called upon another employee, present in the vehicle with the Director, to corroborate the Director's testimony. It emphasizes the Carrier's failure to substantiate the alleged seatbelt violation, thus lacking the necessary evidence for rule enforcement. Notwithstanding, the Organization deems the dismissal disproportionate for what appears to be a minor infraction, especially considering the discrepancy between company policy and contractual agreements.

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 Carrier conducted the procedural aspects of the claims process, and the Claimant had an opportunity to defend himself against the alleged charges. The Board finds insufficient evidence to support the allegation that the Claimant was not wearing a seatbelt and standing on the running board of his hy-rail vehicle while his vehicle was in motion traversing main track. The record consists of conflicting testimonies, discrepancies in witness accounts of the event, and the lack of corroborating witness testimony by the General Director; this investigation should not have been based solely on the testimony of the Claimant and Director of Track Maintenance contrary to principles of just cause. The Board cannot uphold the dismissal based on an allegation without substantial evidence of misconduct.

AWARD

Claim sustained.

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