

PUBLIC LAW BOARD NO. 7660  
CASE NO. 26

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY  
(Former Chicago and Northwestern Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Level 5 UPGRADE discipline assessed (dismissal from service) to Claimant R. J. Dolan for an alleged violation of GCOR Rule 1.6 Conduct (4) dishonesty, was based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File B-1419C-103/1604223 CNW).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Dolan, per Rule 19D must be made whole for all loss and the matter must be stricken from his disciplinary record.”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, a Foreman with 9 years of service, was issued a Notice of Investigation (NOI) dated March 6, 2014 on charges that he reported a full day’s pay for February 20,

26 & 27, 2014 despite failing to work the entire scheduled 10 hour shifts. Claimant was removed from service pending investigation. The January 21, 2014 Notice of Discipline finds Claimant guilty of the charge in violation of GCOR Rule 1.6 Conduct (4) Dishonest, and assesses him a Level 5 dismissal. The instant appeal resulted.

Claimant was the Foreman Class 1 of Gang 2912 in February, 2014. The gang worked out of Eagle Grove, Iowa on a regular schedule of Monday through Thursday, 7:00 a.m. to 5:30 p.m., including a half hour unpaid lunch. Claimant was responsible for inputting the time for his gang into the computer payroll system, at least as of Monday, February 24, 2014. He stated that his Assistant Foreman input the gang's time for the prior week, and when he went into the system he noted "will correct" on February 25. Apparently the entries can be corrected until 3 days after the close of the pay period at the end of the month. Claimant testified that he was just learning the system and having problems with his computer and internet connection. Claimant put in for payment for himself for 10 hours each on February 26 & 27, and did not correct the 10 hour entry from February 20 input by the Assistant Foreman before submitting the payroll.

Manager Reiswig received an email from Claimant's sometime supervisor on February 28 indicating that he observed that Claimant and his gang members were gone from the depot on February 26 by 3:45 p.m. and by 3:30 on February 27, and knew that they had received his permission to leave around noon on February 20, and wondered about their payroll time entries. Managers Reiswig and Gehringer contacted Claimant for a telephone interview concerning these dates on March 4, 2014, during which time Claimant informed them that he left between 2 and 2:30 on February 20, around 4:00 p.m. on February 26 since no one was around to tell them what to do, and around 3:00 p.m. on February 27 since the truck had to go to the shop and there was nothing left to do. Claimant testified that he was removed from service pending investigation, and had been displaced on his position as of Monday, March 3.

At the hearing Claimant initially testified that he was learning the payroll system, was unfamiliar with entering information, and had received help during his first week. He admitted leaving early on these dates, noting that he “will correct” some entries, but stated that he never had the opportunity to do so since he was displaced and reported to Des Moines thereafter. Later Claimant explained that on February 26 he was requested to work overtime performing snow removal on Saturday, May 1 in Des Moines, where he lived, so he left early and took the two hours of travel time he was contractually entitled to for that assignment on February 26 and 27 when it was convenient for him. Claimant stated that he only put in for overtime on March 1 but not for travel time. He did not feel this was improper or that he violated any rules.

The Carrier argues that Claimant was provided a fair and impartial hearing since it is entitled to remove him from service pending investigation under Rule 19, and that doing so was not a prejudgment of guilt. It asserts that it did not become aware of the fact that Claimant was putting in for time not worked until March 4, so that the NOI and initially scheduled hearing date were timely. The Carrier contends that, by Claimant’s own admission, he was guilty of requesting pay for time not worked, which meets its burden of proving the charge against him. The Carrier maintains that it has long been accepted that Level 5 dismissal is the appropriate penalty for a Rule 1.6 (4) dishonesty violation, as noted in the UPGRADE policy.

The Organization contends that Claimant did not receive a fair and impartial hearing as he was prejudged when he was removed from service prior to the investigation, and the Carrier did not timely schedule the hearing under Rule 19 as it had knowledge of the alleged conduct on February 28 and the hearing was not scheduled until March 13. The Organization asserts that Claimant explained the reasons for his payroll discrepancies, noting that he was not responsible for the February 20 entry encompassed in the charges. It posits that Claimant had no intent to violate the rules, and did not

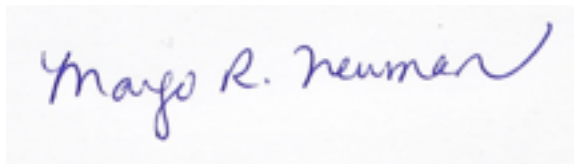
receive pay to which he would not have been entitled under Rule 47 in any event. The Organization argues that the penalty imposed was arbitrary, excessive and unwarranted in these circumstances.

On the basis of the entire record, the Board concludes that there were no procedural defects impacting on Claimant's receipt of a fair and impartial hearing. The Carrier is entitled to hold Claimant out of service pending investigation under Rule 19(A). Additionally, we find that the Carrier did not have knowledge that Claimant was inputting time for services not performed until the payroll was finalized on March 3 and he was questioned on March 4, so its initial scheduling of the hearing was within the time limits applicable.

The Board also confirms that the Carrier met its burden of proving the violation of Rule 1.6 (4) by establishing Claimant's dishonesty when he put in for (or failed to correct) 10 hours pay on each of the three cited dates knowing that he left work before the end of his scheduled shift on each of those occasions. Claimant's lack of trustworthiness was evident from his testimony at the hearing, when he first claimed that he was not properly trained on entering time into the new payroll system and meant to change entries but was displaced before being able to do so, thereby indicating that he understood he was not entitled to the time submitted. Later in his testimony, Claimant justified his entries as intentional based on his belief that he could take the additional 2 hours on each of February 26 and 27 although he did not work them as a means of compensating him for his future anticipated travel for overtime on March 1, and that he did nothing wrong. The record of the investigation justifies the Carrier's conclusion that Claimant was dishonest in his recording and submitting of time for payment on the dates in question, and that the appropriate penalty was dismissal, in line with its UPGRADE policy. The claim is denied.

AWARD:

The claim is denied.



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Margo R. Newman  
Neutral Chairperson

Dated: August 2, 2016



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K. N. Novak  
Carrier Member



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Andrew Mulford  
Employee Member

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