

PUBLIC LAW BOARD NO. 7660  
AWARD NO. 42

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY  
[Former Southern Pacific Transportation Company (Western Lines)]

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s refusal to allow Mr. R. Ranier, Jr. to exercise his accumulated seniority into the Maintenance of Way Department after being terminated from his management position violated Rule 9 of the Agreement (System File MK-1445S-901/1617354 SPW).
2. Carrier’s dismissal of Mr. R. Rainer, Jr. from the Maintenance of Way Department for alleged violation of Rule 1.6 and the Policy on Ethics and Business Conduct in connection with charges that the Claimant was dishonest by allegedly completing a track inspector evaluation form without performing an evaluation was without just and sufficient cause and in violation of the Agreement.
3. As a consequence of the violations referred to in Part(s) 1 and/or 2 above, Claimant R. Ranier, Jr. shall be reinstated with seniority intact and be compensated for wage and benefit loss suffered.”

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 worked for Carrier for 11 years and was a Manager of Track Maintenance (MTM) at the time of the conduct leading to his dismissal from service on June 24, 2014. He served a notice of his intent to return to the craft on August 6, 2014. A Notice of Investigation dated August 15, 2014 was issued on charges of dishonesty by completing the required monthly Track Inspector evaluation form on May 30, 2014 without having performed the evaluation. An investigation was held on September 16, 2014. The September 26, 2014 Notice of Discipline Assessed finds Claimant guilty of the charges in violation of Rule 1.6 Conduct (4) Dishonest, and the Statement of Policy on Ethics and Business Conduct, and assesses him a Level 5 permanent dismissal. The instant appeal resulted.

Claimant submitted a Track Inspector evaluation form for one of his employees dated May 30, 2014, checking off and rating various aspects of his performance. When discussing this report later with his Manager, Claimant admitted he had previously walked and ridden with the Inspector, but that the formal evaluation was not performed that day, and was being scheduled for the following week. Company policy requires a MTM to ride in the truck with the Track Inspector and conduct a formal evaluation once a month. At the investigation, Claimant explained that he had been walking and following this Track Inspector for 3 weeks in May with an FRA Inspector, observing his performance, and writing him up for defects that had not been noted. He stated that this resulted in the Track Inspector receiving two Level 3 disciplines in a short time period.

After the conclusion of Claimant's evidence, where he explained that he had not done the ride along on May 30, but had all the information to accurately fill out the inspection report, and was not reporting falsely by filling out the form, the Charging Manager returned as a witness, offering a copy of a picture of a text he had seen on the phone of the Track Inspector, sent by Claimant. That text reads:

As info I entered a ride with you in the system on the 30th with plans to ride with you on Monday now it looks like it will be wednesday before I can make it happen I'm asking you to be dishonest just thought If (sic) let you know.

The Organization objected to this document, since it was not properly authenticated, could have been altered, and appeared to be obtained during the recess in the hearing. Claimant recalled sending a text to the Track Inspector, but indicated that there was a typo, missing the word "not" before "dishonest," testifying that he would never ask anyone to be dishonest or jeopardize themselves on his behalf, and explaining that he was just trying to schedule the ride along. Claimant stated that in a conversation the next day with the Track Inspector, the typo was brought to his attention, they had a laugh about it, and he clarified that he would never ask anyone to be dishonest for him.

Carrier argues that Claimant's admission of guilt of the charges - falsifying a track inspector evaluation form - meets its burden of proving, by substantial evidence, that Claimant was guilty of dishonesty. It notes that Claimant admitted receiving the 2012 email containing the policy that knowingly providing false information, or willingly fabricating reports, will result in termination from the Company, and that employees with seniority will not be allowed to return to their seniority. Carrier asserts that its right to refuse to return a dismissed employee to the craft has been upheld, citing PLB 6302, Awards 87 & 88. It contends that its use of the termination penalty for a Rule 1.6(4) dishonesty offense is appropriate and has been upheld by the Board, citing PLB5666, Award 73; Third Division Award 31910.

The Organization initially contends that Carrier denied Claimant due process and a fair and impartial hearing by permitting an altered hearsay document to be offered, and admitted into the hearing, by a Carrier Manager who had already been released from testifying, but secured the document during the recess, probably at the urging of the Hearing Officer. It asserts that Carrier violated Rule 9 by not permitting Claimant to return to service in the craft after he was removed from his MTM position. The Organization argues that Carrier did not meet its burden of proving that Claimant was guilty of intentional dishonesty, since he had evaluated the work of the Track Inspector for three weeks in May and had ridden along with him, so the content of the inspection report was accurate, and its submission date of May 30 did not indicate that was the date of the actual ride along evaluation. It notes that the dismissal penalty was excessive for Claimant, who has 11 years of unblemished service and should be permitted to exercise his seniority back into the craft, and be made whole for losses sustained.

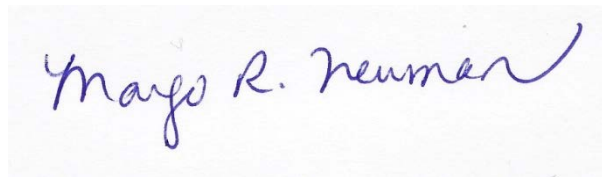
On the basis of the entire record, the Board first notes that the Organization did not show that Carrier violated Rule 9 by not permitting Claimant to return to service after he had been dismissed from his Manager position for dishonesty. That Rule, by its language, applies only if a position is abolished, an employee is displaced or demoted, or if the employee voluntarily relinquishes his position, and does not grant a right of return to craft employees who have been terminated in managerial positions.

The Board is of the opinion that Carrier's assessment that Claimant was dishonest by submitting a monthly Track Inspector report on May 30 indicating that the required formal ride along evaluation was conducted with the employee on that date is neither arbitrary nor unreasonable. Claimant's testimony that the content of the report was accurate, based upon his dealings with the Track Inspector and FRA Inspector for a lengthy period that month, does not change the fact that he submitted a report about a ride along evaluation that had not yet occurred. His intention to perform the ride along in the next few days does not change the conclusion that he knowingly provided false

information on May 30. Regardless of whether the text he sent to the Track Inspector contained a typo, and he did not ask the employee to be dishonest, an argument the Board is willing to accept, the fact remains that the text establishes that Claimant admitted entering a ride along on May 30 when it had not yet been scheduled. The record makes clear that Claimant understood that the result of knowingly providing false information or fabricating a report is cause both for termination from employment, and for denying an employee the ability to exercise his seniority back into the craft. On these facts, Claimant's 11 years of service do not provide a basis for the Board to overrule a reasoned disciplinary decision of Carrier that is supported by substantial evidence.

AWARD:

The claim is denied.



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Margo R. Newman  
Neutral Chairperson

Dated: December 8, 2017



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K. N. Novak  
Carrier Member



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Andrew Mulford  
Employee Member