

PUBLIC LAW BOARD NO. 7660

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT**

and

UNION PACIFIC RAILROAD COMPANY

**Case No: 63
Award No: 63**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. D. Slaugh, by letter dated November 20, 2015, for alleged violation of Rule 1.6: Conduct Dishonest and Rule 1.13: Reporting and Complying with Instructions was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File A-1648U-002/1646964 UPS).
2. As a consequence of the Carrier's violations referred to in Part 1 above, Claimant D. Slaugh shall ' ... be returned to service with the Carrier and allowed to exercise his seniority in the UPRR M/W Craft, as he should have been allowed to do in the first place. In addition, we contend Claimant must be made whole for the Carrier's actions in this case - in the form of a monetary remedy - as compensation for the lost work opportunity he suffered as a result of not being allowed to exercise said seniority.***"

FINDINGS:

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the Brotherhood of Maintenance Employees Division – IBT (hereinafter referred to as the “Organization”) and the Union Pacific Railroad Company (hereinafter referred to as the “Carrier”). Upon the whole record, a hearing, and all evidence as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing thereon. The Claimant was ably represented by the Organization.

The Claimant, Derral Slauch, has been employed by the Carrier since December 1, 1997 and held the position of Manager of Track Maintenance when he was charged with violating Rule 1.6(4), Conduct (Dishonest) and Rule 1.13, Reporting and Complying with Instructions. The Claimant is a management employee who held previously accrued seniority recognized by the Agreement between the Carrier and the Organization. The charges are based on the allegation that the Claimant falsely reported track defects as remediated that were determined to be the cause of a derailment.

On November 3, 2015, the Claimant was notified in writing by the Carrier to report for a hearing and investigation, which was held on November 12, 2015, regarding the aforementioned charges. On November 20, 2015, the Claimant was notified that the Carrier found him guilty of the charges and that he was dismissed from service. The record indicates that the Carrier denied subsequent appeals by the Organization and rendered its final decision on April 15, 2016. An appeal conference held on May 9, 2016 did not resolve the dispute. The Organization rejected the Carrier's decision and moved to have the matter adjudicated before this Board.

The Carrier claims that it has established with substantial evidence that the Claimant violated Rule 1.6(4) and Rule 1.13. It maintains that following a derailment on September 11, 2015 a review of track records was conducted and revealed that the Claimant had reported that track defects at the location of the derailment had been remediated. The Carrier asserts that the inspection of the tracks revealed defects that had not been repaired as reported by the Claimant.

The Carrier contends that during the investigation the Claimant admitted that he reported the defects as remediated but could not verify that they were actually repaired. It avers that falsifying repair records is a dishonest act and endangers the safety of employees. As such, the Carrier argues that the Claimant's guilt has been established and the Board has no basis to alter or modify the penalty imposed. It relies on numerous awards from various boards of adjudication that dishonesty constitutes grounds for permanent termination. The Carrier asserts that a dismissal for cause is sufficient to prevent a management employee from returning to a previously held seniority position covered by the Agreement.

The Organization maintains that the Carrier has not met its burden of proof that the Claimant was dishonest and therefore, it has not established with substantial evidence that he violated the rules cited in the record. The Organization argues that the Claimant made an unintentional data entry that caused the erroneous report regarding the track defects. The Organization asserts that a mistake is not falsifying a record and therefore, not a dishonest act.

The Organization maintains that there is ample arbitral precedent where discipline is to be progressive and not punitive. It argues that should the Board conclude that the charges are sustained, discipline should be used to correct behavior and not to unjustly punish the Claimant. The Organization avers that the Carrier's decision to remove the Claimant from his position as a manager should not prevent him from exercising his seniority in another position covered by the Agreement.

In discipline cases, as the one before the Board here, the burden of proof is upon the Carrier to prove its case with substantial evidence and, where it does establish such evidence, that the penalty imposed is not an abuse of discretion. Upon review of all the evidence adduced during the on-property investigation, the Board here finds that the record contains credible and reliable evidence that the Claimant violated Rule 1.6 (4) and Rule 1.13.

The Board finds that the Carrier has established that the Claimant was dishonest when he submitted a false report that track defects found by the "evaluation car" or "EC" in May and June 2015 had been remediated. The documentary evidence, the testimony of Director of Track Maintenance, Phil Egan, and the Claimant's testimony establishes that he made a data entry reporting that the defects noted by the EC were either remediated or that there was no defect found. The report, entered on June 22, 2015, showed the defects as being either closed out or repaired. One date in the report contained 22 defects that were reported as remediated but upon a visual inspection were not properly repaired. The record confirms that the defects were not addressed and led to a derailment on September 11, 2015.

The Organization's strenuous argument that the Claimant made an honest error when

entering the data must be rejected. The Claimant gave contradictory testimony as to whether the repairs were actually made but yet reported them as having been addressed. His assertion that he properly relied on information provided to him by foremen and track inspections is unsupported in the record. There is no evidence in the record to cast doubt on the Carrier's determination that the Claimant was dishonest in making his track defect report on June 22, 2015. The Carrier's credibility determinations of witnesses who testified during the hearing and investigation are not to be disturbed absent evidence that its conclusions are arbitrary. A review of the documentary evidence and testimony does not provide a basis to ignore the Carrier's assessment. It is well established by arbitral precedent that the Board sits in review of the Carrier's findings made on the property and does not make *de novo* findings. Here, there is no basis to replace the Carrier's credibility determinations of the witnesses' testimony with our own.

Legions of boards have found that acts of dishonesty are serious infractions where dismissal has been consistently upheld, irrespective of the previous disciplinary record or length of service. See Public Law Board ("PLB") No. 6402, Award No. 40, PLB No. 7633, Award No. 35 and PLB No. 6459, Award No. 19. It is well established in the industry that leniency is reserved to the Carrier where there is no abuse of discretion or where the penalty imposed is excessive.

Despite the Organization's valiant efforts in urging the Board to permit the Claimant to return to his former seniority position covered by the Agreement, the Board finds no authority in the Agreement to make such a determination. The Claimant's rights under the Agreement entitled him to a hearing and investigation, which he did not have as a management employee. Since a fair and impartial hearing was conducted and there are no grounds to set aside the finding of guilt, the Carrier did not err when it refused to reinstate the Claimant to a position covered by the Agreement. See also PLB No. 6420, Award No. 40.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Carrier has established with substantial evidence that the Claimant violated

Rule 1.6 (4) and Rule 1.13 when he submitted a false track defect report on June 22, 2015.

AWARD

Claim denied.



Michael Capone
Neutral Member

Dated: May 14, 2018



Alyssa K. Borden
Carrier Member

Alyssa K. Borden
Carrier Member

Dated: 05/16/18



Andrew M. Mulford
Labor Member

Andrew M. Mulford
Labor Member

Dated: 5/16/18