

PUBLIC LAW BOARD NO. 7660

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

and

UNION PACIFIC RAILROAD COMPANY

**Case No: 93
Award No: 93**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. J. Bailey, by letter dated December 19, 2016, for alleged violation of Rule 1.6: Conduct - Dishonest was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File A-1748U-001/1679714 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Bailey shall be returned to service with all other rights and benefits unimpaired."

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, Jeremy Bailey, has been employed by the Carrier for approximately 17 years and held the position of Track Inspector at the time of his dismissal. The Carrier alleged that the Claimant violated Rule 1.6(4): Conduct (Dishonest) when he input an incorrect pay code to receive a higher rate of pay for the period of March 27 to October 27,

2016.

A hearing and investigation was conducted on November 29, 2016. On December 19, 2016, the Carrier notified him in writing that he was dismissed from service. The Organization filed its claim on January 22, 2017. The record indicates that the Carrier denied subsequent appeals by the Organization and following a conference on May 19, 2017 upheld its decision to dismiss the Claimant. The Organization rejected the Carrier's decision and moved to have the matter adjudicated before this Board.

The Carrier maintains that the documentary evidence and the testimony of Manager of Track Maintenance ("MTM"), Paul Barkley, provide substantial evidence that the Claimant altered his pay code in order to receive a higher rate of compensation than the one to which he was entitled. The Carrier asserts that the Claimant's admission further confirms that he engaged in a dishonest act.

The Organization argues that the Carrier has not met its burden of proof that the Claimant was dishonest. It alleges that the discipline is unwarranted since the record does not contain the requisite substantial evidence in support of the charges.

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 evidence adduced during the on-property investigation, the Board here finds that the record contains substantial evidence that the Claimant violated Rule 1.6(4). The payroll records introduced into the record by MTM Barkley, as well as his credible testimony, provide convincing evidence that the Claimant was dishonest. Despite the Organization's valiant argument that the evidence was not sufficient, the Claimant's own testimony confirms that he engaged in dishonest conduct. As such, the Board need not make any further inquiry.


Legions of arbitration boards in the industry 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. 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. There is no basis in the record to conclude that the Carrier was arbitrary or otherwise abused its discretion.

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 provided substantial evidence that the Claimant engaged in dishonest conduct when he falsified his payroll records.

AWARD

Claim denied.



Michael Capone
Neutral Member

Dated: January 17, 2019



Alyssa K. Borden
Carrier Member

Dated: 01/17/19



Andrew M. Mulford
Labor Member

Dated: 01/17/19