

**PUBLIC LAW BOARD NO. 7660**

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

**and**

**UNION PACIFIC RAILROAD COMPANY  
[Former Chicago and North Western Transportation Company]**

**Case No: 96  
Award No: 96**

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. R. Mendez by letter dated February 10, 2017 for alleged violation of Rule 1.6.2: Notification of Felony Convictions and Rule 6.1.1 [sic] Drug and Alcohol Policy was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File J-1719C-403/1682348 CNW).
2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimant R. Mendez shall be returned to service immediately, have the disciplined removed from his record and all vacation restored and credit given for days missed had he not been unjustly removed from service."

**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 of Way 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, Raul Mendez, has been employed by the Carrier for approximately 11 years and held the position of a Class B Tie Installer/Remover at the time of his dismissal.

The Carrier alleged that the Claimant violated Rule 1.6.2, Notification of Felony Convictions and Rule 6.1.1 of its Drug and Alcohol Policy when he did not provide the Carrier notice of a felony conviction within 48 hours from when it was rendered on October, 28, 2016.

A hearing and investigation was conducted on February 2, 2017. On February 10, 2017, the Carrier notified the Claimant in writing that he was dismissed from service. The Organization filed its claim on February 24, 2017. The record indicates that the Carrier issued its final decision on April 27, 2017 and upheld its decision to dismiss the Claimant. The Organization rejected the Carrier's decision and moved to have the matter adjudicated before this Board.

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. The Board does not find any procedural errors that nullify the need to review the merits of the dispute. Upon review of all the evidence adduced during the on-property investigation, the Board here finds that the record contains substantial evidence that the Claimant violated Rule 1.6.1 and Rule 6.1.1 of the Carrier's Drug and Alcohol Policy.

The testimony and documentary evidence confirms that the Claimant failed to notify the Carrier of his felony conviction on October 28, 2016 and did not do so until January 25, 2017. The Claimant testified that he did not provide the required notice in violation of Rule 1.6.1. Further, the conviction for unlawful possession of a controlled substance is prohibited conduct under the Drug and Alcohol Policy and considered a dismissal event under the Carrier's Policy for Managing Agreement Professionals for Success ("MAPS"). Despite the Organization's valiant argument that the Claimant believed he was complying with the applicable rules and that he did notify his supervisor of his arrest, it was the Claimant's responsibility to comply with the Carrier's requirements, particularly where the record indicates that he participated in a Drug and Alcohol Policy review course only a month before the felony conviction. Based on the foregoing, the record provides a sufficient basis to find that the Carrier has met its burden of proof with substantial evidence that the


Claimant violated its rules and policies.

There is ample arbitral precedent in the industry and on the Carrier's property that have found that violating rules that require notice of felony convictions are serious infractions where dismissal has been consistently upheld. It is well established in the industry that leniency is reserved to the Carrier where there is no abuse of discretion. The record does not contain any evidence that the Carrier was biased in dismissing the Claimant. The Board has no basis to alter the Carrier's decision.

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 violated the applicable rules when he failed to report his felony conviction within 48 hours of October 28, 2016.

**AWARD**

Claim denied.

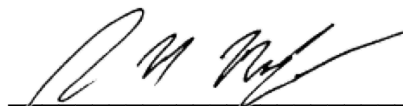
  
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Michael Capone  
Neutral Member

Dated: January 17, 2019



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Alyssa K. Borden  
Carrier Member

Dated: 1/17/2019



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Andrew M. Mulford  
Labor Member

Dated: 01/17/19