

PUBLIC LAW BOARD NO. 7766

Brotherhood of Maintenance
of Way Employees Division - IBT

and

New Orleans Public Belt Railroad

Award No. 7

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. J. Foreman, by letter dated March 16, 2017, for violation of NOPB Safety and Operating Rules GR-4 in connection with allegations that he failed to report for duty and protect his assignment was based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File NOPB512JF17 NOP).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Foreman shall ‘*** be paid any and all lost wages at his respective straight time rate of pay, any and all overtime, at his respective overtime rate of pay performed by anyone working in his capacity of work on his assigned gang, to be returned to active service beginning as soon as he is released from his personal physician or physicians, through and including on a continuous basis until this matter is settled with all seniority unimpaired. Also, the Claimant to be accredited all lost time to vacation, especially vacation and /or personal days applied before FMLA leave, hospitalization, dental, vision, etc. Any and all expenses the Claimant may have had attending this Formal Investigation on February 21, 2017 , to include meals and lodging (if any) , and mileage from the Claimant’s place of residence *** to The New Orleans Public Belt Railroad’s Administration Building, 940 Central Avenue, Metairie, Louisiana, and return to the Claimant’s place of residence, at the negotiated rate (sic) of \$.53.5 cents a mile, account the Carrier accused, and disciplined the Claimant with dismissal without sufficient evidence.’ (Employee’s Exhibit ‘A-3’).”

FINDINGS:

Public Law Board No. 7766, upon the whole record and all the evidence, finds the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction of the dispute herein; the parties were given due notice of hearing before this Board and they participated therein.

The Claimant was disciplined pursuant to a Notice of Investigation dated January 6, 2017, Investigation held February 21, 2017, “to ascertain the facts and determine your responsibility, if any, in connection with your failure to report for duty at the designated time and place and failure to protect your job or communicate with the Carrier on Friday December 30, 2016.”

In a discipline letter dated March 16, 2017, the Carrier found that “*there was relevant evidence to support the conclusion that Mr. Foreman was guilty of violating NOPB Safety and Operating Rule GR-4...Termination is warranted for this major offense of job abandonment. Accordingly, I hereby terminate Mr. Foreman effective immediately.*”

The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties’ respective positions, whether or not specifically addressed herein.

There is substantial evidence in the record to uphold the Carrier’s discipline determination. The Organization’s defenses are not persuasive. Rule GR-4 is clear. Claimant failed to report for duty, thus violating the rule. The discipline assessed by the Carrier was not arbitrary, capricious, or an abuse of discretion under the facts and circumstances of this record. Therefore, it will not be disturbed by this Board.

AWARD:

Claim denied.

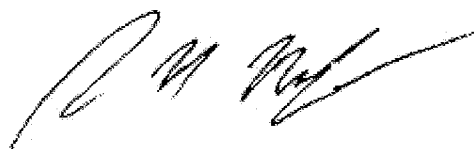
A handwritten signature in black ink, appearing to read "Robert Grey", is written over a horizontal line.

Robert Grey
Neutral Member

Dated: March 13, 2019



Chloé Pedersen
Carrier Member



Andrew Mulford
Organization Member