

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6402
AWARD NO. 163, (Case No. 184)**

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

vs

**UNION PACIFIC RAILROAD COMPANY (Former Missouri Pacific
Railroad Company)**

William R. Miller, Chairman & Neutral Member
T. W. Kreke, Employee Member
K. N. Novak, Carrier Member

Hearing Date: February 23, 2011

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

- 1. The dismissal of Machine Operator E. D. Fedon for violation of GCOR Rule 1.6 (Conduct - Part 3 - Insubordination) in connection with his failure to follow the instructions of Track Supervisor B. Green on June 24, 2010 is unjust, unwarranted, based on unproven charges and in violation of the Agreement (System File UP-218-WF-10/1536483).**
- 2. As a consequence of the violation outlined in Part 1 above, the charges against Mr. Fedon shall be dropped and he shall be reinstated with compensation for all lost time including straight time and overtime and all other rights due him under the Collective Bargaining Agreement."**

FINDINGS:

Public Law Board No. 6402, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

The record indicates that the Claimant entered the service of the Carrier on January 26, 2004, and on the date of the incident was working as a Machine Operator.

On June 30, 2010, the Carrier advised Claimant to appear for a formal Investigation on July 14, 2010, concerning in pertinent part the following charge:

"...to develop the facts and place responsibility, if any, that on June 24, 2010, at morning Job Briefing you were allegedly insubordinate to Mr. Brandon Green,

Track Supervisor, when he told you on three (3) occasions to put down your cell phone and participate in morning warm up to work exercises.

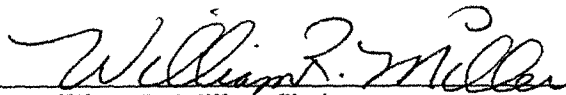
These allegations, if substantiated, would constitute a violation of Rule 1.6, Part 3 (Insubordinate), as contained in the General Code of Operating Rules, effective April 7, 2010. Please be advised that if you are found to be in violation of this alleged charge the discipline assessment may be a Level 5, and under the Carrier's UPGRADE Discipline Policy may result in permanent dismissal."

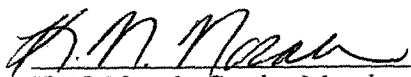
On July 29, 2010, Claimant was notified that he had been found guilty as charged and assessed a Level 5 and dismissed from service.

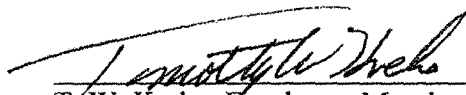
The skillful arguments of the respective parties need not be reiterated in this instance as the question of Claimant's alleged guilt has become academic because in Award No. 162, Case No. 183 (which is a companion case involving the same Claimant) the Board found that Carrier's decision to dismiss Claimant was appropriate. Therefore, the Board finds and holds that the dismissal in Award No. 162 cannot be overridden and the question raised in the instant case is now moot, thus, the Claim is dismissed.

AWARD

Claim dismissed.


William R. Miller, Chairman


K. N. Novak, Carrier Member


T. W. Kreke, Employee Member

Award Date: June 27, 2011