

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6402
AWARD NO. 175, (Case No. 196)**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
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

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

- 1. The dismissal of Mr. J. E. Ward for violation of General Code of Operating Rules 1.6, Part 3 (Insubordinate) in connection with his failure to provide information regarding his condition, level of function, anticipated return to work date, work restrictions or requirements and prescription medications, if any, to the Health and Medical Department as instructed is based upon unproven charges, unjust, unwarranted and in violation of the Agreement (System File UP-225-WF-10/1539643).**
- 2. As a consequence of the violation referred to in Part (1) above, Mr. Ward shall be granted remedy in accordance with Rule 21(f) of the 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.

On August 6, 2010, Carrier notified Claimant to appear for a formal Investigation on August 19, 2010, which was mutually postponed until September 7, 2010, concerning in pertinent part the following charge:

"...to develop the facts and place responsibility, if any, that you allegedly failed to provide information regarding your condition, level of function, anticipated return to work date, work restrictions or requirements, and prescription medications, if any, to the Health and Medical Department as instructed.

These allegations, if substantiated, would constitute a violation of Rule 1.6,

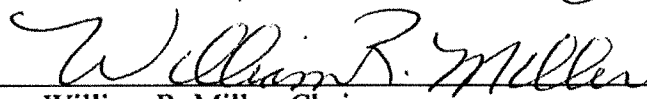
Part 3 (Insubordinate), as contained in the General Code of Operating Rules, effective April 7, 2010. Please be advised that if you are found to be in violation of this alleged charge the discipline assessment may be a Level 5, and under the Carrier's UPGRADE Discipline Policy may result in permanent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

On September 23, 2010, Claimant was notified that he had been found guilty as charged and assessed a Level 5 and dismissed from service.

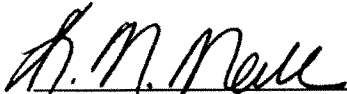
The skillful arguments of the respective parties need not be reiterated in this instance as the question of Claimant's alleged guilt has become academic as the parties have resolved the dispute. Therefore, the Board finds and holds that the case is dismissed because the issue is moot.

AWARD

Claim dismissed.



William R. Miller, Chairman



K. N. Novak, Carrier Member



T. W. Kreke, Employee Member

Award Date: 4-5-2012