

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 3689

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

AWARD NO. 9

Case No. 9

STATEMENT OF CLAIM

1. Claim of the System Committee of the Brotherhood that the Carrier violated the provisions of the current Agreement when it arbitrarily removed Extra Gang Laborer J. S. Luse from its service for allegedly violating Rule 48(k).

2. The Carrier will now be required to reinstate Extra Gang Laborer J. S. Luse to its service with seniority and all other rights restored unimpaired and compensation for all wage loss suffered.

FINDINGS

By letter dated January 14, 1985, the Claimant was notified as follows:

This is to advise that the Company's records indicate you have been absent from the service without proper authority for the following five (5) consecutive workday period -- January 7, 8, 9, 10 and 11, 1985.

Rule 48(k) of the Agreement between the Carrier and the Organization, reads as follows:

"Employees absenting themselves from their assignments for five (5) consecutive working days without proper authority shall be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained.

You are, therefore, considered as having voluntarily forfeited your seniority rights and employment relationship.

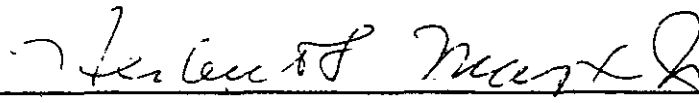
It is well established that rules such as Rule 48(k) are self-executing, are non-disciplinary in nature, and do not require an investigative hearing prior to implementation. The Rule does, however, permit the showing of "justifiable reason . . . as to why proper authority was not obtained". On behalf of the Claimant, the Organization attempted to show such reasons for the Claimant's absence. The Carrier demonstrated in the course of the claim handling procedure that, contrary to allegation, there was no convincing evidence that the Claimant had, in fact, given any notification to the Carrier as to his absence for the cited period prior to the conclusion of the period.

In further support of its action, the Carrier pointed to the severe absenteeism of the Claimant during the months

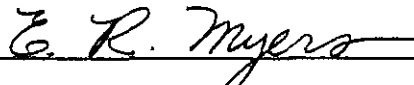
just prior to January 1985. The Organization is correct that such past record is of no direct consequence in the application of Rule 48(k). However, this past record lends additional credibility to the Carrier's account of no-show no-notice, contrary to the pleading of the Claimant that some notice had been given.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Chairman and Neutral Member



E.R. MYERS, Carrier Member



C.F. FOOSE, Employee Member

New York, N. Y.

DATED:

December 17, 1985