

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. The dismissal assessed Sectionman D. A. Baker for alleged violation of various company rules in connection with purportedly being absent without proper authority as indicated in Mr. Farr's letter of December 14, 1990, is arbitrary, unconscionable and totally unwarranted.

2. In light of (1) above, the claimant's record shall be cleared of the discipline referred to in Part (1) and he shall be returned to service and compensated for all time lost.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation to be held in Green River, Wyoming at 9:00 a.m. on November 19, 1990 to determine his responsibility, if any, in connection with an alleged charge he was absent from work without authorization during the period from October 15 through October 19, 1990.

The investigation was postponed and held on December 3, 1990. The claimant agreed to the postponement.

G. S. Thompson, Manager of Track Maintenance, testified he became aware the claimant had started missing time on October 16 and then returned to work on October 22. Mr. Thompson testified at that time he learned the claimant had been absent without authorization. He testified he had no contact with the claimant until he returned to work on October 22. He stated the claimant told him he was not aware he had to contact him to be absent from work.

J. L. Valdez, Section Foreman, testified he was instructed by Mr. Thompson to tell the claimant he was to call Mr. Thompson for time off. He stated he relayed those instructions to the claimant on October 4, 1990. He further testified the claimant acknowledged he understood those instructions.

Foreman Valdez also testified that on October 15 and 16 when the claimant called him, he assumed the claimant had also called Mr. Thompson. He testified that on October 17 when the claimant called he told him he had better call Mr. Thompson because he did not have the authority to grant him any time off. He also stated he told the claimant the same thing on October 18.

The claimant testified that prior to October 15 he had never been given instructions to contact Mr. Thompson for absenteeism. The claimant testified he was sick with the flu. The claimant did testify that on October 5 Joe (meaning Mr. Valdez) did say something about calling Mr. Thompson for absences.

The claimant further testified that he attempted to call Mr. Thompson on October 15 and 16 by public phone. He testified he did not have a phone in his home. He further stated he thought Mr. Valdez was going to contact Mr. Thompson.

The Union contends the time limit rule was violated since the claimant's absences commenced on October 15, 1990, and the investigation was not scheduled until November 19, 1990. On that basis it is urged the investigation should have been held within thirty days of October 16, 17, 18 or 19, 1990.

The Board has examined Rule 48(a). The claimant was first notified to attend an investigation on November 19, 1990. This investigation was later postponed with the concurrence of the claimant. The Carrier certainly is not required to hold the investigation on November 15, 16 or 17 since the supervisor might determine that an investigation was unnecessary. The investigation was held within the time period necessary under the agreement between the parties.

The Union also contended that Rule 48(c) was violated because the charges were not precise, and the notice was not sent to the General Chairman and the Assistant Chairman of the territory involved. The Board has reviewed the charges. The claimant was charged with being absent from work without authorization during the period from October 15 through October 19, 1990.

These charges are specific, and certainly the claimant and his representative knew what he was being charged with. Also the evidence establishes that the claimant's representative and/or the claimant should have requested a postponement if they believed they were not properly prepared to defend the charges. The evidence indicates the claimant was well represented by competent ability.

There are some extenuating circumstances in this case. It is evident the claimant wanted to continue his work and abide by the rules of the Carrier. Because of the extenuating circumstances involved in this dispute, it is the opinion of the Board that permanent dismissal is too severe.

On the foregoing basis the Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired but without pay for time lost.

AWARD: Claim sustained as per above.

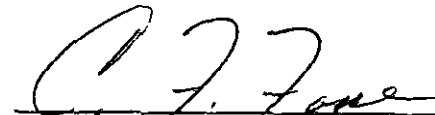
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ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.


Preston J. Moore, Chairman


Union Member


Carrier Member