

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6089

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 17
)
) Award No. 14
)

Martin H. Malin, Chairman & Neutral Member
R. B. Wehrli, Employee Member
D. A. Ring, Carrier Member

Hearing Date: August 26, 1999

STATEMENT OF CLAIM:

1. The dismissal of System Section Foreman M. G. Guterrez was in violation of the Agreement, based on unproven charges and an abuse of discretion.
2. Claimant Guterrez must be reinstated to his previous assignment with his seniority and all other rights restored unimpaired; he must be compensated for all wage losses incurred since his unjust dismissal; and all charges and reference to this incident must be expunged from his personal record. (System File: R-9848.104/11365530)

FINDINGS:

Public Law Board No. 6089, 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 February 19, 1998, Carrier notified Claimant to report for an investigation on February 27, 1998, in connection with his alleged dishonesty in documenting repairs on FRA Inspection Report #4. The hearing was held as scheduled. On March 18, 1998, Carrier informed Claimant that he had been found guilty of the charge and was dismissed from service.

The Organization raises a number of procedural arguments. We have reviewed the transcript of the hearing carefully and find that Claimant was afforded a fair and impartial investigation. None of the procedural errors alleged by the Organization provide grounds for

overturning the discipline.

The record reflects that on January 29, 1998, Claimant did initial the FRA inspection report, indicating that defects 1 and 7 had been corrected when he knew that they had not been. Accordingly, we conclude that Carrier proved the charge by substantial evidence.

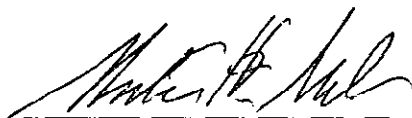
However, in light of the circumstances of this matter, particularly Claimant's 37 years of service and certain ambiguities in the record, we find that dismissal is an excessive penalty. Accordingly, we shall order that Claimant be reinstated to service with seniority and benefits unimpaired but without compensation for time held out of service. Furthermore, we shall order that Claimant be permanently disqualified from any supervisory position, including track inspector.

AWARD

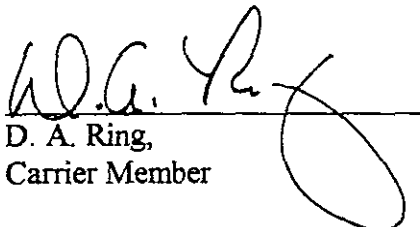
Claim sustained in accordance with the Findings.

ORDER

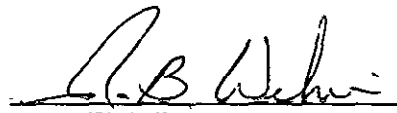
The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



R. B. Wehrli
Employee Member

Dated at Chicago, Illinois, January 31, 2000.