

PUBLIC LAW BOARD NO. 6237

**AWARD No. 12
CASE No. 12**

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees

vs.

Union Pacific Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

DATE: January 8, 2003

DESCRIPTION OF CLAIM:

Claimant H. A. Rodriguez was dismissed from service for dishonesty by submitting payroll for time not worked and for failing to follow instructions in connection with scheduled appointments for a work hardening program.

At the time of his dismissal, Claimant had approximately three years and seven months of service. His prior record contained two previous disciplinary instances for absence without authority.

The Claim seeks to overturn the discipline.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The review of the investigation transcript reveals no procedural shortcomings of significance. Claimant's removal from service pending investigation does not constitute discipline in violation of Rule 48 *per se*. Nor does the failure to cite specific rule numbers in the notice of investigation violate the Agreement. Rule 48 requires only that Claimant be apprised "... of the precise nature of the charges(s) ..." The notice in this case did that.

It is undisputed that Claimant sustained an off-duty injury to his back. Nonetheless, the Carrier provided him with a work hardening program of physical therapy and exercise to aid in his return to service. He was also provided with a light duty assignment at full pay, which included two hours daily at the work hardening program.

The first week of the program went as planned. However, his supervisor was out of town for the second week and a replacement supervisor filled in.

Claimant admits he was instructed to notify the supervisor if he was to miss any of the work hardening sessions. Although he missed sessions on December 10, 12, 13, and 14, substantial evidence in the record supports the finding that he did not inform the supervisor.

In addition, substantial evidence in the record permits the finding that Claimant called his foreman each day to claim the full eight hours of pay for each day during the second week of the program despite knowing that he had missed four of the two-hour sessions.

Given the presence of this evidence, there is no proper basis for disturbing the Carrier's action.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member

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