

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 6302**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

and

**UNION PACIFIC RAILROAD COMPANY**

)  
) Case No. 9  
)  
) Award No. 3  
)

Martin H. Malin, Chairman & Neutral Member  
D. D. Bartholomay, Employee Member  
D. A. Ring, Carrier Member

Hearing Date: May 12, 2000

**STATEMENT OF CLAIM:**

1. The Level 1 discipline and the letter of reprimand assessed Group 26 System Gang Employee L. E. Small for his alleged unauthorized absence on November 9 and 10, 1996 was without just and sufficient cause, based on unproven charge, arbitrary and in violation of the Agreement (System File D-274/1064356D).
2. As a consequence of the violations referred to above, the Carrier shall now clear Laborer L. E. Small's record of the Level 1 discipline and the letter of reprimand.

**FINDINGS:**

Public Law Board No. 6302, 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.

By letter dated November 26, 1996, Carrier instructed Claimant to attend an investigation on December 4, 1996, at Pocatello, Idaho, in connection with his allegedly being absent without

authority on November 9 and 10, 1996. The hearing was held, as scheduled, in absentia. By letter dated December 23, 1996, Carrier advised Claimant that he had been found guilty of the charged and assessed discipline at Level 1 of Carrier's UPGRADE, i.e. a letter of reprimand.

The primary issue in this case concerns Carrier's refusal to postpone the hearing upon being advised of Claimant's inability to attend. The notice of investigation was mailed to Claimant's home address in Pinon, Arizona. At the beginning of the hearing, the Vice Chairman represented that Claimant had telephoned him on Monday evening, December 2. Claimant advised that by the time the notice of investigation had arrived at his home, Claimant had departed for his assignment in North Platte, Nebraska. Claimant had telephoned his family on December 2 and learned of the notice of investigation.

The Vice Chairman further represented that he spoke with the Hearing Officer on December 3 and requested a postponement because Claimant was working on a gang in North Platte. The Hearing Officer did not grant the request but suggested that the Vice Chairman call Claimant to see if Claimant was amenable to accepting a Level 1 discipline. The Vice Chairman represented that he called Claimant on December 3 and that Claimant declined to accept the discipline.

Finally, the Vice Chairman represented that Claimant had only one car, which he left with his wife to use at their home in Arizona. Consequently, Claimant rode to North Platte with coworkers and did not have transportation to come to Pocatello from North Platte. The Vice Chairman renewed his request for a postponement and asked that the hearing be held in North Platte.

The Hearing Officer offered to postpone the hearing to December 5. The Vice Chairman advised that the one day postponement would not solve the problem because Claimant lacked transportation from North Platte to Pocatello. The Hearing Officer then held the hearing in absentia.

The Organization urges that the refusal to postpone the hearing denied Claimant his right to a fair and impartial hearing, guaranteed by Rule 48(a) of the Agreement. We agree.

No one has questioned the accuracy of the Vice Chairman's representations. Given the probable amount of time it would take for Carrier's notice of investigation to be transmitted by the Postal Service to Claimant's home in Pinon, Arizona, particularly in light of the intervening Thanksgiving holiday, it is quite reasonable to believe that the notice did not arrive until after Claimant had left for his assignment in North Platte. Upon learning of the hearing, Claimant did all that could be expected of a reasonable employee in his situation. He contacted his representative and advised his representative of the situation. The Vice Chairman then contacted the Hearing Officer and requested a postponement.

There is no reason to believe that, at the time he left for North Platte, Claimant had reason

to believe that he would receive a notice requiring him to travel from North Platte to Pocatello for a hearing. It was reasonable, under the circumstances, for Claimant to ride with a coworker to North Platte. Thus, upon learning of the scheduled hearing, Claimant, through no fault of his own, found himself in a predicament of having to be in Pocatello on December 4 without transportation to get there.

On the other hand, the record is devoid of any objective justification for Carrier's refusal to postpone the hearing. The infraction with which Claimant was charged was relatively minor. There is no indication that a postponement would have caused any prejudice to Carrier. The only reason cited by the Hearing Officer for proceeding with the hearing was that the incident under investigation occurred in Pocatello and that the Carrier witness was working in Pocatello at the time of the hearing. Those factors would justify holding the hearing in Pocatello and denying the Organization's request to move the hearing to North Platte. However, those factors do not justify refusing to grant a reasonable postponement to enable Claimant to travel to Pocatello to attend the hearing.

Nevertheless, Carrier argues that the claim should be denied because the Hearing Officer offered a postponement and the Organization declined the offer. Carrier maintains that the Vice Chairman should have accepted the offered postponement and, "if more time was found to be needed, asked for another postponement at that time." We do not agree. The Hearing Officer offered to postpone the hearing to the following day. The Vice Chairman declined the offer because the Claimant, lacking transportation, would not be able to attend the hearing even with the one day postponement. Acceptance of the one day postponement in an effort to enable Claimant to attend the hearing would have been a futile gesture. The Vice General Chairman explained why it would have been futile. He had no further obligation.

There simply is no reason for the Hearing Officer not to have postponed the hearing for a reasonable period of time, such as to the following week, which under the circumstances would have enabled the Claimant to travel to Pocatello to attend the hearing. By refusing such a reasonable postponement, the Hearing Officer failed to provide Claimant with a fair hearing and violated Rule 48(a). Accordingly, the claim must be sustained.

## **AWARD**


Claim sustained.

## ORDER

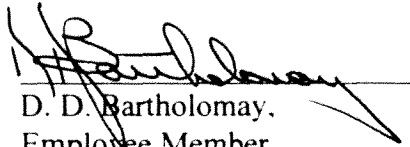
The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto.



Martin H. Malin, Chairman



D. A. Ring,  
Carrier Member



D. D. Bartholomay,  
Employee Member

Dated at Chicago, Illinois, June 12, 2000.