

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 117
UNION PACIFIC RAILROAD COMPANY) Award No. 108
_____)

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

Hearing Date: June 4, 2007

STATEMENT OF CLAIM:

- (1) The discipline imposed upon R. Q. Sosa for an alleged violation of Union Pacific Rule 1.6(4) and 1.15 of the General Code was unwarranted, arbitrary and on the basis of unproven charges. It was alleged that Carrier violated Rules 1, 48, 48(a), 48(b) and 48(c) of the Agreement.
- (2) The Organization requested that the Claimant be returned to service with all rights restored unimpaired immediately, It was further requested that he be compensated for all time lost subsequent to October 3, 2005 and that benefit provisions be allowed as if he had worked. Finally that any mention related to the removal was to be removed from his personal record.

FINDINGS:

Public Law Board No. 6302 upon the whole record and all of 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 October 7, 2005, Claimant was notified to report for a formal investigation on October 24, 2005. The notice alleged that on October 1, 2005, while assigned as Flagman for crews working the Fiber Optic project between MP 445 and 444 on the Caliente Subdivision, Claimant was found three to eight miles away from the gang. It further alleged that on the same date, Claimant obtained track and time from 16:00 to 18:00, left the jobsite without proper authority and released the track while he was not at the jobsite, leaving the jobsite with an open trench. The notice also alleged that on the same day at 16:00, Claimant used a contractor's radio

and spoke profanities. It further alleged that between June 3, 2005, and September 30, 2005, Claimant claimed time and pay for hours he was not at work, and that between July 10, 2005, and September 30, 2005, Claimant allowed unauthorized persons to ride in a company vehicle despite being warned not to do so on September 20, 2005. The notice charged Claimant with violating Rules 1.15, 1.13 and 1.6. The hearing was postponed to and held on October 31, 2005. On November 18, 2005, Claimant was advised that he had been found guilty of violating Rules 1.15 and 1.6 and had been dismissed from service.

The Organization raised several procedural objections. First, the Organization contended that the notice of charges was not precise as required by Rule 48(c). We have interpreted Rule 48(c) to require that the notice state the charges with sufficient precision to enable the charged employee and the Organization to prepare a defense. *See* Public Law Board 6302, Case No. 23, Award No. 22. We have reviewed the notice of charges and find that it meets this standard. Carrier identified the specific acts which gave rise to the alleged rule violations, the location of those acts and the date and time of those acts. With respect to actions that took place over an extended period of time, Carrier identified the actions and the time frame during which they allegedly occurred. We find no violation of Rule 48(c).

The Organization further argues that Carrier violated Rule 48(a) by withholding Claimant from service without providing him with a hearing. However, as we have pointed out previously, *see, e.g.*, Public Law Board 6302, Case No. 23, Award No. 22, Rule 48(o) allows Carrier to remove an employee from service pending investigation where charges involve flagrant or serious violations. Certainly the charges at issue in the instant case, which included allegations of very serious unsafe acts and theft of time, were sufficiently serious to allow Carrier, in accordance with Rule 48(o) to withhold Claimant from service.

Finally, the Organization contends that Carrier violated the Agreement by postponing the hearing without the Organization's agreement. Rule 48(b) provides, "Formal hearings may be postponed or time limits referred to herein extended by mutual agreement between management and the employee or his representative." The record reflects that Carrier attempted to contact the Organization to request agreement to the postponement, left a voice mail message, and when it did not receive a return phone call called Claimant and Claimant agreed to the postponement. We find no procedural basis for setting aside the discipline.

The record contains ample evidence that Claimant falsified his time rolls. We do not find it necessary to recount all of the evidence related to all of the dates. We believe that a representative sample is sufficient.

Claimant was assigned as EIC/flagger for the contractor who was installing fiber optics and power from Moapa, Nevada to Caliente, Nevada. The record reflects that for June 17, 2005, Claimant claimed to have worked 11 hours but the contractor's crew to whom he was assigned worked only 6.5 hours. Although Claimant testified that when the crew to which he was assigned did not work, he assisted with flagging for other crews of the contractor, the contractor testified that on June 7, the entire job was shut down at 12 noon because high winds made it

unsafe to continue. Thus, there was no other crew working for Claimant to have assisted.

Similarly, Claimant claimed 12 hours for September 1, 2, 3, 24, 27 and 28; and eight hours for September 25, even though the contractor's crew to whom he was assigned did not work. Although one or two of the contractor's other crews worked most of those days, on September 28, no crews of the contractor worked. Again, Claimant's contention that when the crew to which he was assigned did not work, he assisted the flaggers for the other crews is inconsistent with his claiming time for a day that no contract crew worked. Moreover, Claimant furnished absolutely no evidence to corroborate his claim that he assisted other flaggers when the crew to which he was assigned did not work. We conclude that Carrier proved the allegations that Claimant falsified his time rolls, violating Rule 1.6, by substantial evidence.

The record further also contains ample evidence that Claimant left the job site on October 1, 2005, without proper authority. Here too, we find it unnecessary to recount all of the evidence in the record. It is sufficient to note that the record reflects that Claimant obtained track and time at 16:00 hours through 18:00 hours but was not at the job site from 16:30 hours on. At 18:12, Claimant released the track but was not present at the job site when he did so. As a consequence, he failed to ensure that the contractor's crew was off the track when he released it and failed to ensure that the track was left in a safe condition. Specifically, Claimant's supervisor observed a 250 foot long open trench that the contractor had left without fencing it off. The supervisor's testimony was corroborated by the contractor. Rule 1.15 prohibits employees from leaving their assignments without proper authority. Claimant lacked authority to leave his assignment on October 1 and by leaving his assignment, he created serious safety hazards. Carrier proved the charge of violating Rule 1.15 by substantial evidence.

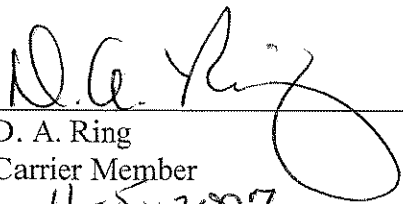
We turn to the penalty imposed. Our role in reviewing the penalty is limited to determining whether it is arbitrary, capricious or excessive. Falsification of time rolls amounts to theft and, standing alone, such dishonesty is generally found to justify dismissal. In the instant case, the offense is aggravated as Claimant falsified his time rolls on numerous occasions and Claimant also left his job assignment on October 1, 2005, without proper authority and, in so doing, created multiple safety hazards. Under the circumstances, the penalty imposed clearly was not arbitrary, capricious or excessive.

AWARD

Claim denied.

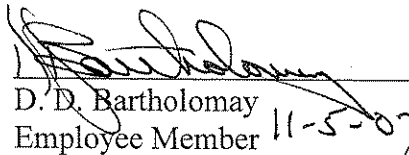


Martin H. Malin, Chairman



D. A. Ring
Carrier Member

11-5-2007



D. D. Bartholomay
Employee Member

11-5-07

Dated at Chicago, Illinois, October 25, 2007