

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 127
UNION PACIFIC RAILROAD COMPANY) Award No. 128
_____)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: February 7, 2008

STATEMENT OF CLAIM:

- (1) The discipline of dismissal imposed upon D. P. Overholt 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 the Carrier violated Rules 1, 48, 48(a), 48(b) and 48(c) of the Agreement.
- (2) The Organization requested in their claim 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 November 10, 2005, Claimant was directed to report for an investigation on November 21, 2005, concerning his alleged reporting paid time for employees on days when they were not present on company property, including Robert Yates for October 20 and 21, and for his reporting additional paid time to foremen and assistant foremen as incentives for meeting production targets in violation of Rules 1.2.5, 1.4 and 1.6(4). The hearing was postponed to and held on December 20, 2005. On January 5, 2006, Claimant was advised that he had been found

guilty of violating Rules 1.4 and 1.6 and dismissed from service. On January 16, 2006, Carrier notified Claimant that it had determined that the discipline had served its purpose and reinstated him to service.

The Organization argues that Carrier violated Rule 48 by unilaterally postponing the hearing from November 21 to December 20. Carrier maintains that it obtained the Organization's agreement to the postponement. The record contains statements from individuals related to the postponement that were not introduced at the hearing, but neither party has objected to consideration of those statements. The statements agree that there was a telephone conversation between the Manager Track Projects and the Vice Chairman concerning postponement of the hearing. However, the statements disagree over whether the Vice Chairman agreed to the postponement and whether he had the authority to make such an agreement. As an appellate body that does not observe witnesses testify, we are unable to resolve such disputes of fact. Accordingly, we are unable to find that the postponement was without the Organization's agreement and conclude that the postponement does not provide a basis for overturning the discipline.

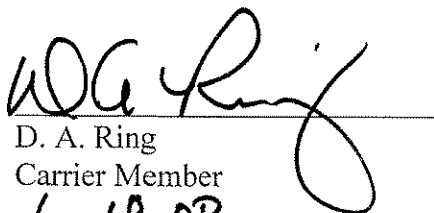
There is no dispute that Claimant entered time for employee Robert Yates for October 20 and 21, 2005, even though Mr. Yates was not present. There is also no dispute that Claimant entered an hour of overtime for various foremen and assistant foremen for days that they did not work the overtime. Claimant's conduct was clearly improper. Claimant testified that he reported the time at the direction of his immediate supervisor. Claimant realized, however, that his actions were improper and the improper instructions from his supervisor do not excuse his actions. We need not decide whether the supervisor's instructions should mitigate against discharge because Carrier reinstated Claimant to service on January 16, 2006, thus converting his discharge to a suspension. We cannot say that the suspension was arbitrary, capricious or excessive.

AWARD

Claim denied.



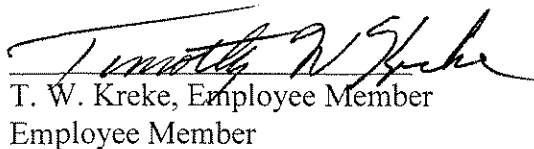
Martin H. Malin, Chairman



D. A. Ring
Carrier Member

6-18-08

Dated at Chicago, Illinois, June 13, 2008



T. W. Kreke, Employee Member
Employee Member