

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 136
UNION PACIFIC RAILROAD COMPANY) Award No. 135
_____)

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 assessment (a 5-day suspension) issued to Mr. Kevin A. Gosser for allegedly failing to maintain equipment as well as allegedly failing to follow foreman and work equipment mechanics instructions regarding equipment maintenance was based on unproven charges and in violation of the Agreement.
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant is to be made whole as if there had been no discipline and no suspension. Also, Claimant is to be paid for all hours that he would have worked absent the suspension on July 24th through 28, 2006, including any overtime and he shall be compensated for his time not paid on the day of the hearing, July 14, 2006. His record is to be cleared of all charges.

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 May 23, 2006, Carrier notified Claimant of an offer of discipline. The notice charged that Claimant, while working as a Ballast Regulator Operator on May 12, 2006, failed to properly maintain the equipment and failed to follow foreman and work equipment mechanic's instructions. The notice offered discipline at UPGRADE Level 3, and advised Claimant of his

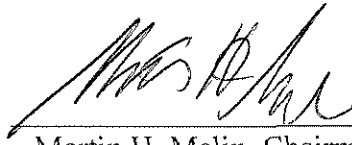
right to a formal hearing or of the option to elect participation in the Behavior Modification Program. On June 9, 2006, Claimant elected to exercise his right to a formal hearing. On June 12, 2006, Claimant was directed to report for an investigation on June 23, 2006, concerning the charges previously set forth and reiterated in the June 12 notice. The hearing was postponed to and held on July 14, 2006. On July 21, 2006, Claimant was advised that he had been found guilty of the charges and assessed discipline at UPGRADE Level 3, a five day suspension.

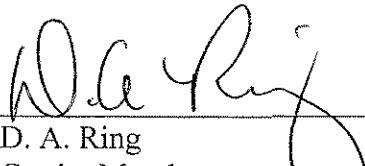
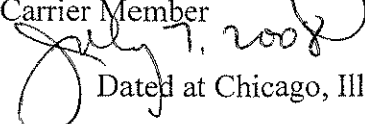
The Organization contends that Carrier failed to provide Claimant with a statement of the precise charges against him. We do not agree. Carrier is contractually obligated to provide Claimant with a statement of charges sufficiently precise to enable him to prepare his defense. We believe that the notice of charges provided to Claimant met this standard.

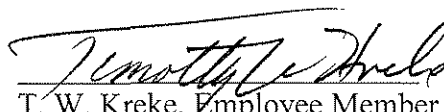
We have reviewed the lengthy record in this case and find that Carrier proved the charges by substantial evidence. Several witnesses testified to the condition of the ballast regulator as found in an inspection on May 12, 2006. Particularly telling is testimony from several witnesses that the fluid levels in the boom drive, the gear drive and the transmission were low, yet Claimant admitted he had never had the plugs out.

AWARD

Claim denied.


Martin H. Malin, Chairman


D. A. Ring
Carrier Member

Dated at Chicago, Illinois, June 25, 2008


T. W. Kreke, Employee Member
Employee Member

