

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 143
UNION PACIFIC RAILROAD COMPANY) Award No. 139
_____)

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

Hearing Date: June 18, 2008

STATEMENT OF CLAIM:

- (1) The dismissal of Machine Operator Samuel W. Howard in connection with alleged violation of Rule 1.6 in connection with his possession and located on his personal property a Miller welder discovered to belong to the Union Pacific Railroad, is based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File J0748U-256/1474209).
- (2) As a consequence of the violation outlined in Part (1) above, we request dropping of all charges against Mr. Howard, reinstatement of Mr. Howard, the removal of discipline from his personal record, and payment for all time he was unjustly withheld from service of the Union Pacific Railroad.

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 January 8, 2007, Carrier notified Claimant to report for an investigation on January 19, 2007. The notice charged that Claimant had in his possession a Miller welder that was Carrier property in possible violation of Rule 1.6. The hearing was held as scheduled. On February 2, 2007, Claimant was notified that he had been found guilty of the charge and

dismissed from service.

The record reflects that Carrier received a phone call from Claimant's ex-girlfriend advising that Claimant had stored Carrier property at her father's house. A Carrier Special Agent responded, made contact with the informant, went to her father's house and located hard hats and work gloves. At that point, the ex-girlfriend advised the Special Agent that Claimant had also been storing a Carrier welder at her residence. The Special Agent accompanied the ex-girlfriend to her residence where he found a Miller Trailblazer 300 welder. The Special Agent contacted the Manager Track Maintenance who came to the location. Using the welder's serial number, the MTM was able to trace it to its point of purchase by Carrier and its shipment to Oroville, California on August 2, 1999.

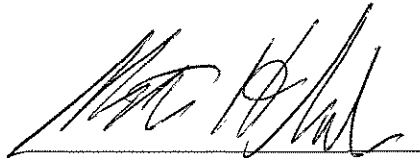
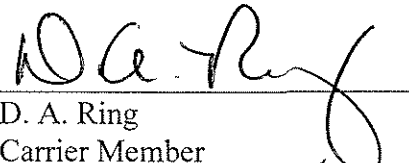

There is no question that Claimant had Carrier property in his possession. The critical question is whether Carrier proved by substantial evidence Claimant's dishonest intent. Claimant testified that he found the welder disassembled on a scrap pile at the edge of Carrier property in Denver, near a shop building. Claimant testified that he asked a carman "if he thought there would be any problem . . . or anybody would see any problem . . . me taking it and seeing if, you know, by maybe chance I could get it running for myself." According to the Claimant, the carman "said he didn't see where it would be any problem and it had been there for months that he had known of prior to me asking about it."

Carrier did not credit Claimant's explanation as to how he came to have the welder in his possession. We find Carrier's determination in this regard to be reasonable. The hearing officer is the adjudicator who observes the witnesses testify and the hearing officer's credibility determinations are entitled to deference as long as they are reasonable. In the instant case, even under Claimant's version of events, Claimant never received authority to remove the welder from Carrier property. When asked directly if anyone gave him such authority, Claimant answered evasively, "Indirectly, I mean, as - as, you know, the carman made that comments that, you know, he didn't see that anybody would say - have any problem . . ." Furthermore, the MTM testified that Carrier did not scrap tools such as a welder. Rather, Carrier would dispose of equipment that has gone beyond its useful life by sending it to auction.

We conclude that Carrier proved Claimant's dishonesty by substantial evidence. Such dishonesty is a dismissible offense. We see no reason to disturb the penalty.

AWARD

Claim denied.


Martin H. Malin, Chairman
D. A. Ring
Carrier Member
11-12-08
T. W. Kreke, Employee Member
Employee Member Nov 12, 2008

Dated at Chicago, Illinois, October 30, 2008