

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 147
UNION PACIFIC RAILROAD COMPANY) Award No. 142
_____)

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 Francisco R. Maestas for alleged violation of Rule 14(a) of the Agreement in connection with the allegation that he falsified his application for employment is unjust, unwarranted and in violation of the Agreement (System File D-07-38D/1482618 UPS).
- (2) As a consequence of the violation outlined in Part (1) above, we request that Mr. Maestas' employment status now be restored to either an authorized MLOA, or to active duty and service, if his current physical condition at that time will allow him to do so. The Organization further requests, that the Claimant now be compensated for any and all straight time, overtime, and double time, (if applicable), wage loss suffered, payable at his applicable straight time rate of pay of \$19.47 per hour, commencing from the date of dismissal, May 7, 2007, to continue until such time as this discipline of dismissal is overturned and rescinded.

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 April 18, 2007, Carrier notified Claimant to report for an investigation on April 27, 2007. The notice charged that Claimant allegedly falsified his employment application with

respect to a prior back injury. The hearing was held as scheduled. On May 7, 2007, Carrier notified Claimant that he had been found guilty of the charges and dismissed from service.

Rule 14(a) of the Agreement provides:

Applications for employment will be rejected within sixty (60) calendar days after seniority date is established, or applicant will be considered accepted. Applicants rejected by the Carrier must be declined in writing to the applicant.

An employee who has been accepted for employment in accordance with this provision will not be terminated or disciplined by the carrier for furnishing incorrect information in connection with an application for employment or for withholding information therefrom unless the information involved was of such a nature that the employee would not have been hired if the Carrier had timely knowledge of it.

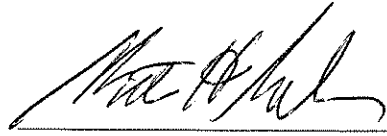
The record reflects that Claimant applied for employment with Carrier on May 10, 2002. As part of his application, he completed a General Health History on which he checked, "no," to the question, "Do you have or have you ever had . . . Problems, injury or surgery involving the spine, neck or back." Medical reports, however, indicated that Claimant had a history of chronic back pain dating to 1997 or 1998. Claimant reported during a medical examination on March 9, 2007, that he had lost time at work once a year because of his back pain. He was seen by a physician on December 6, 2000, for his back pain. In his testimony, Claimant admitted that he had a history of back pain but claimed that he did not misrepresent his condition on his employment application because he was never given a specific diagnosis with respect to his back. Claimant's "explanation" was not credited on the property and understandably so, as the General Health History clearly asked Claimant to disclose "problems, injury or surgery . . ." he had ever had. A reasonable person would understand this to include the ongoing history of back pain and medical treatment therefor that Claimant had experienced as of his May 10, 2002, application.

Given the strenuous nature of the work that Claimant applied to do, it is not at all surprising that the Director of Track Maintenance testified that had Claimant disclosed his back history, he would not have been hired. We conclude that Carrier proved the charge by substantial evidence.

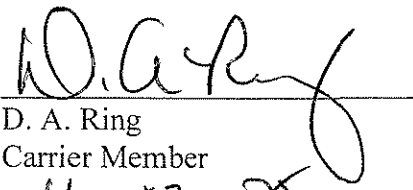
Claimant's misrepresentation on his employment application is a very serious offense. The penalty of dismissal was not arbitrary, capricious or excessive.

AWARD

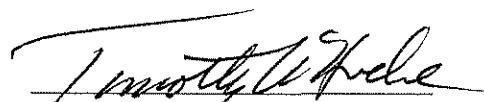
Claim denied.



Martin H. Malin, Chairman



D. A. Ring
Carrier Member
11-12-08
Dated at Chicago, Illinois, October 30, 2008



T. W. Kreke, Employee Member
Employee Member Nov 12, 2008