

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 25
)
) Award No. 30
)

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

Hearing Date: January 23, 2002

STATEMENT OF CLAIM:

1. The discipline (Level 5 dismissal) assessed Extra Gang Foreman S. Martinez, Jr. for his alleged dishonesty and failure to comply with instructions on December 27, 1999 was without just and sufficient cause and based on unproven charges (System File W-0048-156/1231020).
2. Extra Gang Foreman S. Martinez, Jr. shall now be reinstated to service with seniority and all other rights unimpaired, compensated for all wage loss suffered and his record shall be cleared of incident.

FINDINGS:

Public Law Board No. 6302, upon the whole record and all 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 10, 2000, Carrier notified Claimant to appear for an investigation on January 18, 2000, concerning his alleged dishonesty and failure to comply with instructions in connection with his failure to remove per diem and travel allowances from his gang's payroll. The hearing was held as scheduled. On February 4, 2000, Claimant was notified that he had been found guilty of the charges and dismissed from service.

The record reflects that Claimant was assigned to an on line gang, entitled to per diem seven days per week pursuant to Agreement Rule 39(e). Claimant's supervisor instructed Claimant to work mandatory overtime on Saturday, December 18, 1999. Claimant declined to work that day, citing previous commitments. Nevertheless, Claimant submitted his payroll for per diem for December 18 and 19, 1999.

Claimant's supervisor interpreted Rule 39(e) to preclude Claimant from entitlement to per diem for December 18 and 19 because Claimant declined to work the mandatory overtime on December 18. Consequently, the supervisor instructed Claimant to remove the per diem from his payroll. Claimant did not do so.

Much of the Organization's argument focuses on the language of Rule 39(e). The Organization maintains that Claimant was entitled to the per diem payments for December 18 and 19 despite his failure to work on December 18. The Organization's argument misses the point. The issue is not whether Claimant's interpretation of Rule 39(e) or his supervisor's interpretation is the proper one. The issue is whether Claimant failed to follow instructions to remove the per diem payments from his payroll and whether, by deliberately keeping them on his payroll when he knew that Carrier did not find him entitled to them he acted dishonestly. The answer to these questions is clearly yes. If Claimant believed he was entitled to the payments, his proper course of action was to obey the instructions and file a claim. Accordingly, we find that Carrier proved the charges by substantial evidence.

We recognize Claimant's lengthy tenure with Carrier. However, the charges established are very serious, particularly the charge of dishonesty which warrants a Level V, dismissal, under Carrier's UPGRADE policy. We see no reason to conclude that the penalty imposed was arbitrary, capricious or excessive.

The Organization has also raised a number of procedural arguments. We have reviewed these arguments and find that they do not require substantial discussion. They present no basis for overturning the discipline.

AWARD

Claim denied.

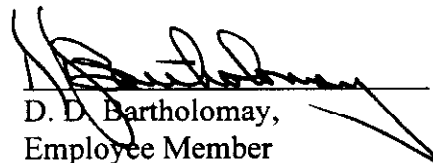


Martin H. Malin, Chairman



D. A. Ring,
Carrier Member

Dated at Chicago, Illinois, June 14, 2002.



D. D. Bartholomay,
Employee Member