NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)
	) Case No. 32
and	)
	) Award No. 32
UNION PACIFIC RAILROAD COMPANY	)

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 (withheld from service and subsequent dismissal) imposed upon Mr. J. Quezada for alleged violation of Union Pacific Rule 1.13 and 1.6 effective April 10, 1994 in connection with a travel allowance payment for his round trip made from his work location at Trenton, Missouri to his residence at Wilder, Idaho and returning to his work location on the weekend commencing April 9, 1999, was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File J-9948-62/1212094).

2. As a consequence of the violation referred to in Part (1) above, Mr. J. Quezada shall have the charges leveled against him removed from his record, be reinstated to service with seniority and all other rights unimpaired and compensated for all time lost beginning June 12, 1999 and continuing.

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 June 12, 1999, Carrier notified Claimant to appear for an investigation on June 29, 1999, concerning his alleged dishonesty and insubordination when he claimed mileage travel allowance payments when in fact he flew home via commercial airline. The hearing was postponed to and held on July 20, 1999. On August 17, 1999, Claimant was notified that he had been found guilty of the charges and dismissed from service.

The record reflects that Claimant was assigned as a bus driver to a system gang. Under

Article XIV of the September 26, 1996 National Mediation Agreement, Claimant was entitled to be paid a travel allowance equal to actual mileage driven by the most direct automobile route each weekend that he drove home. Alternatively, Claimant was entitled to airfare to fly home once every three weeks. For the weekend of April 9, 1999, Claimant flew home but claimed and was paid a mileage travel allowance as if he had driven.

There is no dispute that Claimant flew home on the weekend in question and that he received a travel allowance as if he had driven. The critical factual dispute concerns whether Claimant acted dishonestly in doing so. Claimant maintained that he did not submit the travel allowance request personally, that he believed he was entitled to the mileage regardless of whether he drove or flew and that he had always driven home with the weekend of April 9 being the only time he flew home. Claimant explained that he went home April 9 to have dental work performed and his dentist had told him ahead of time that he would be receiving pain medication which would make it dangerous for him to drive back. Claimant advanced the dental work and pain medication as the explanation for flying home instead of following his usual practice of driving.

The Agreement itself is clear that an employee is not entitled to automobile mileage if he flies home. Flying home is covered by a different section of Article XIV. Carrier did not credit Claimant's testimony that he honestly believed he was entitled to the mileage allowance even if he flew home. Generally, we defer to credibility determinations made on the property. The instant case is an excellent illustration of why we show such deference. Pending before this Board is Case No. 33 which challenges Claimant's dismissal for additional weekends where he flew home but was paid automobile mileage. In the hearing which led to the discipline in Case No. 33, Claimant admitted that he did not testify truthfully in the instant investigation when he claimed that April 9 was the only weekend he had flown home. Claimant has displayed a pattern of dishonesty and we conclude that Carrier proved the charges against him by substantial evidence.

The charges established are very serious and warrant 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.

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AWARD

Claim denied.

Martin H. Malin, Chairman

D. A. Ring,
Carrier Member

D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, June 14, 2002.