

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 37
)
) Award No. 35
)

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

Hearing Date: April 1, 2003

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier terminated the seniority of System Gang Laborer I. Trujillo pursuant to Rule 48(k) because of his absence from work on August 22, 23, 24, 25 and 26, 1999 (System File R-0048-101/1231035).
2. As a consequence of the violations referred to in Part (1) above, System Gang Laborer I. Trujillo shall be reinstated to service with seniority and all other rights unimpaired and compensated for all time lost.

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 September 2, 1999, Carrier notified Claimant that he had forfeited his seniority because he had been absent without authorization for five consecutive work days, i.e. August 22, 23, 24, 25 and 26, 1999. Rule 48(k) provides:

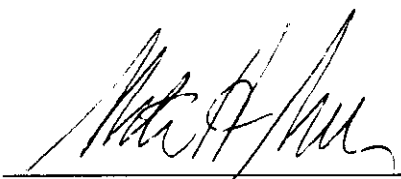
Employees absenting themselves from their assignment for five (5) consecutive working days without proper working authority shall be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained.

There is no question that Claimant was absent for five consecutive work days. The

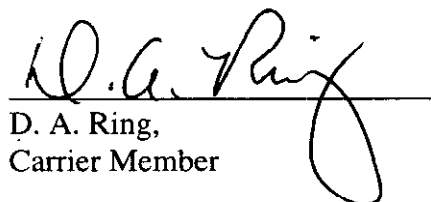
Organization contends that Claimant established justifiable reason for his failure to obtain proper authority, specifically that Claimant's absences were medically related. However, the medical documentation submitted during handling on the property reflect that Claimant had a serious medical condition after the dates on which Carrier based his forfeiture of seniority. The record contains no evidence showing that Claimant was medically disabled from working on August 22, 23, 24, 25 and 26, 1999. Accordingly, we cannot find that justifiable reason for Claimant's failure to obtain proper authority for his absences has been established.

AWARD

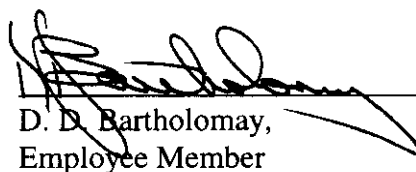
Claim denied.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, August 26, 2003.