

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
) Case No. 38
and)
) Award No. 36
UNION PACIFIC RAILROAD COMPANY)

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 discipline (withheld from service , subsequent Level 5 and dismissal) imposed upon Mr. R. A. Yoak for alleged violation of Union Pacific Rule 1.6 of the General Code of Operating Rules in connection with charges of falsifying his employment application and medical history on Form 16900 was arbitrary, capricious, without just and sufficient cause and in violation of the Agreement (System File W-0048-163/1242664).
2. As a consequence of the violations referred to in Part (1) above, Mr. R. A. Yoak shall now have the aforesaid discipline removed from his personal record and shall be returned to service and compensated for all time that he was withheld from service.

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 April 13, 2000, Carrier notified Claimant to attend an investigation on April 19, 2000, concerning his alleged falsification of his employment application and medical history. The hearing was postponed to and held on April 27, 2000. On May 17, 2000, Carrier notified Claimant that he had been found guilty of the charge and dismissed from service.

The Organization contends that Carrier failed to prove the charge by substantial evidence

and that Carrier violated 48(a) of the Agreement. We have reviewed the record carefully and concluded that Carrier proved the charge by substantial evidence. Claimant admitted that he failed to disclose his prior treatment for back pain on Carrier's Form 169900, Post-Offer Pre-placement Medical History. His only explanation was that he did not read the form carefully enough. Carrier did not credit that defense and we see no reason to disturb the credibility determination made on the property.

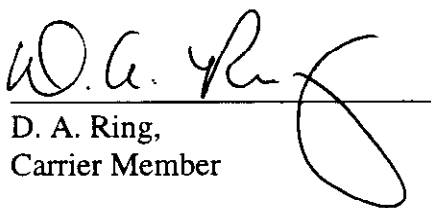
Rule 48(a) requires that the investigation be held "within thirty (30) calendar days from the date of the occurrence to be investigated or from the date the Company has knowledge of the occurrence to be investigated . . ." The Manager Track Projects testified that he first received Claimant's prior medical records during the week of April 10, 2000. The notice of investigation was dated April 13, 2000, the investigation was originally scheduled for April 19, 2000, and was actually held on April 27, 2000. We find that Carrier complied with Rule 48(a).

AWARD

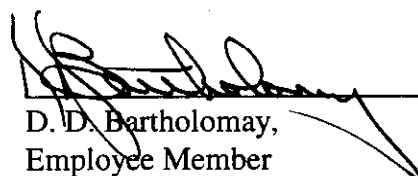
Claim denied.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, August 26, 2003.