

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
) Case No. 44
and)
) Award No.42
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 Level 5 (dismissal) assessed Assistant Foreman J. W. Clark for his alleged failure to report a felony conviction which occurred on April 20, 2000 was without just and sufficient cause, arbitrary, capricious and based on unfounded allegations (System File D-02-13D/1328371-D).
2. Assistant Foreman J. W. Clark shall now be reinstated to service at first available opportunity and with all seniorities intact, that his discipline entry of dismissal be rescinded and removed from claimants' personal record, and that claimant be compensated for all wage loss suffered commencing from April 22, 2002, to continue until such time as this action perpetuated against claimant by the Carrier ceases, and claimant is rightfully restored to active 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 March 7, 2002, Carrier notified Claimant to attend an investigation on March 20, 2002, concerning his alleged failure to report a felony conviction that occurred on April 20, 2000, which was brought to Carrier's attention on March 6, 2002. Following two postponements, the hearing was held on April 3, 2002. On April 22, 2002, Carrier notified Claimant that he had been found guilty of the charge and dismissed from service.

The instant claim challenges the dismissal of the same individual who was the Claimant

in Case No. 43, Award No. 41. In that award we denied his claim arising out of his dismissal in an unrelated investigation. The investigation and dismissal at issue in Case No. 43, Award No. 41 preceded the investigation and dismissal at issue in the instant case. In light of our denial of the claim in Case No. 43, Award No. 41, the claim in the instant case is moot.

AWARD

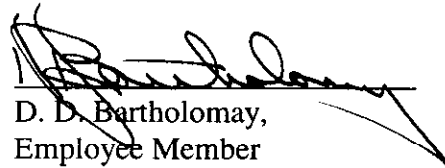
Claim dismissed.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, September 26, 2003.