

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 60
)
) Award No. 49
)

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

Hearing Date: March 23, 2004

STATEMENT OF CLAIM:

1. The discipline (seniority termination) of C. G. Walker for allegedly being absent from his assignment without proper authority commencing September 7, 2001, was without just and sufficient cause (System File W-0248-160/1349015).
2. Mr. C. G. Walker shall now be reinstated to service compensated for all wage loss suffered "... from the time that Mr. Walker would have finished his treatment thru Arbor Family Counseling for this unjust treatment."

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.

In July 2001, as part of a return to work physical, Claimant tested positive for an illegal drug. On August 7, 2001, Carrier mailed a certified letter to Claimant's last address of record advising him of his positive drug test and offering him a one-time opportunity to return to service in accordance with Carrier's Drug and Alcohol Policy. The Postal Service returned the letter to Carrier unclaimed. Because Claimant did not accept the one-time opportunity, his medical disqualification terminated on September 6, 2001. Claimant did not return to work.

On September 10, 2002, Carrier notified Claimant that he had forfeited his seniority because he had been absent without authorization for five consecutive work days. Rule 48(k) provides:

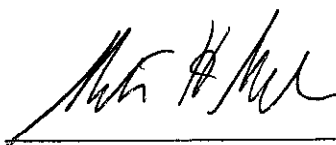
Employees absenting themselves from their assignment for five (5) consecutive working

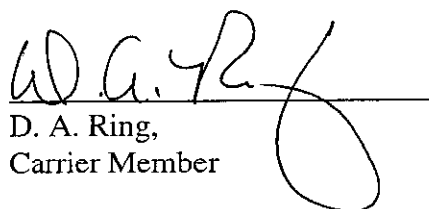
days without proper working authority shall be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained.

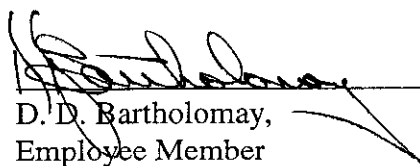
Although Rule 48(k) further provides that an employee who has forfeited his seniority may request a conference to provide a reason for the unauthorized absence, Claimant did not request such a conference. The record contains no evidence that Claimant in any way advised Carrier as to why he was going to be absent. Under these circumstances, the claim must be denied.

AWARD

Claim denied.



Martin H. Malin, Chairman

D. A. Ring,
Carrier Member

D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, June 29, 2004