

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 61
)
) Award No. 50
)

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

Hearing Date: March 22, 2004

STATEMENT OF CLAIM:

1. The discipline (seniority termination) of Mr. H. E. Ryan for allegedly being absent from his assignment without proper authority on July 2,3,4,5 and 6, 2002, was without just and sufficient cause (System File W-0248-162/1353252).
2. Mr. H. E. Ryan shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

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 July 9, 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.

In accordance with Rule 48(k), Claimant requested a conference. Prior to the conference, Claimant approached his supervisor and advised that his absences were due to personal problems. The supervisor told Claimant to contact a counselor with Peer Support and that if he completed the Peer Support training, he could be reinstated. Claimant did not go through the Peer Support process.


The conference was held on November 4, 2002. At the conference, Claimant stated that he did not go through the Peer Support process because an Employee Assistance counselor told him not to. Carrier told Claimant that it would still consider reinstatement if he could provide documentation that the EAP counselor told him not to follow contacts with Peer Support.

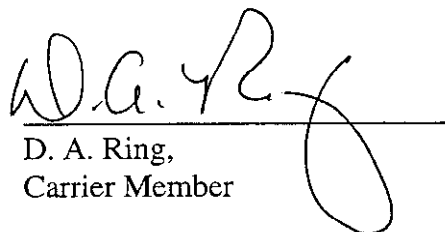
Claimant produced a letter from the EAP counselor stating that the counselor advised Claimant to appear alone for an evaluation session on August 7, 2002, because he was under the impression that Claimant had been referred to him by the EAP. Instead, the counselor's letter states, Claimant was referred by his supervisor. The letter does not state that the counselor advised Claimant not to follow through with Peer Support.

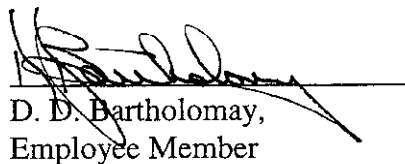
Rule 48(k) is self-invoking. The purpose of the 48(k) conference is to allow an employee whose seniority has been terminated to furnish a reason why he did not obtain authority for his absences. There is no dispute that Claimant was absent for five consecutive days without authority and there is no contention that, at the conference, Claimant furnished a valid reason for his failure to obtain authority. The only matter in dispute concerns whether Carrier complied with an offer that Carrier characterizes as a leniency reinstatement. Assuming, without deciding, that we have authority to consider such a matter, the Organization has failed to carry its burden of proof that Claimant complied with the terms of the reinstatement offer.

AWARD

Claim denied.



Martin H. Malin, Chairman

D. A. Ring,
Carrier Member

D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, June 29, 2004