

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 63
)
) Award No. 66
)

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

Hearing Date: February 16, 2005

STATEMENT OF CLAIM:

1. The Carrier's decision to inappropriately terminate Truck Operator T. L. Atwood's seniority following the issuance of Third Division Award No. 33609 and Award 25 of Public Law Board No. 6302 was without just and sufficient cause and in violation of the Agreement (System File D-0348-4/1376420 D)
2. Truck Operator T. L. Atwood 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 September 28, 1992, Carrier dismissed Claimant from service. On September 26, 1995, the Third Division of the National Railroad Adjustment Board, in Award No. 31140 sustained the Organization's claim on the ground that Carrier, in denying to the claim, failed to provide written reasons for its decision. In connection with his return to work physical, Claimant tested positive for illegal drugs. Carrier advised Claimant that he would be afforded one more opportunity to return to service, provided that he contact the EAP within thirty days and comply with other substance abuse rehabilitation conditions. Following an investigation, Carrier dismissed Claimant for insubordination for his alleged failure to contact the EAP. In Award No. 33609, issued on November 16, 1999, the Third Division sustained the Organization's claim and ordered Claimant reinstated, conditioned on his enrollment and successful completion of a rehabilitation program in Carrier's EAP.

Meanwhile, on July 8, 1996, following an investigation, Carrier dismissed Claimant for dishonesty and insubordination. The investigation revealed that when Carrier paid Claimant his back pay in compliance with Award No. 31140, Carrier neglected to deduct monies to be repaid to the Railroad Retirement Board for unemployment compensation. Carrier instructed Claimant to repay the monies but Claimant's attorney advised him that he was not obligated to do so and Claimant, relying on that advice, refused to do so. In Award No. 25, issued June 28, 2002, we sustained the Organization's claim, finding that Carrier had failed to prove dishonesty or insubordination.

Following issuance of Award No. 25, Carrier notified Claimant that he was required to complete prescribed EAP programs before he would be allowed to exercise seniority. In so doing, Carrier relied on Award No. 33609. Prior to enrolling in the EAP, Claimant suffered third degree burns in an off-duty accident. Carrier reinstated Claimant's medical benefits and placed him on a leave of absence. When Claimant was released to return to duty, he contacted the EAP manager and signed a Personal Program Agreement on May 3, 2003. Subsequently, Claimant was discharged from the Pine Ridge Treatment Center for failing to comply with EAP treatment program rules. On July 17, 2003, the EAP Manager notified the Director Track Maintenance of these developments. The following day, the Director Track Maintenance notified Claimant that he had reverted back to the status of a dismissed employee.

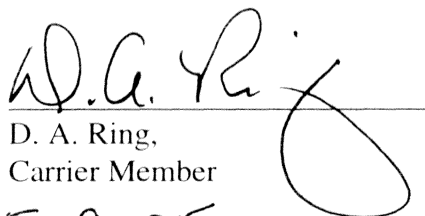
The Organization contends that Carrier failed to comply with Award No. 25's order that Claimant be reinstated. The Organization's claim requires us to interpret Award No. 25 and clarify the relationship between Award No. 25 and Award No. 33609. Nowhere did Award No. 25 indicate that it superceded Award No. 33609. We in no way intended Award No. 25 to supercede Award No. 33609. Thus, when Carrier reinstated Claimant in compliance with Award No. 25, Claimant was still subject to the conditions set forth in Award No. 33609. Those conditions included enrollment in the EAP treatment program. Claimant did enroll in the treatment program but failed to cooperate with the program, resulting in his discharge from the program without successfully completing it. Consequently, Claimant reverted to the status of a dismissed employee, per the conditions provided in Award No. 33609. We conclude that Carrier complied with Award No. 25 and that its reversion of Claimant to a dismissed status for his failure to comply with the conditions on Award No. 33609 was entirely appropriate.

AWARD

Claim denied.

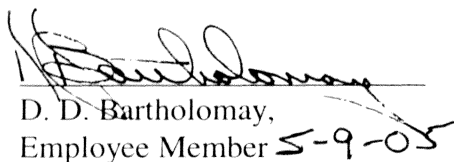


Martin H. Malin, Chairman



D. A. Ring,
Carrier Member

5-9-05



D. D. Bartholomay,
Employee Member

5-9-05

Dated at Chicago, Illinois, April 22, 2005