

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 68
)
) Award No. 68
)

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 dismissal of Trackman Robert Wenger for his alleged unauthorized absence on October 7, 2003, was without just and sufficient cause, excessive and undue punishment and in violation of the Agreement (System File J-0348-78/1386955-D).
2. As a consequence of the violations referred to in Part (1) above, Trackman Robert Wenger 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 October 10, 2003, Carrier notified Claimant to report for a formal investigation on October 15, 2003, concerning his alleged violation of Rule 1.15 by being absent without authority on October 7, 2003. The notice also advised Claimant that under Carrier's UPGRADE policy, the third violation of the same rule within 36 months would result in dismissal from service. Claimant was withheld from service pending investigation. On October 31, 2003, Carrier notified Claimant that he had been found guilty of the charge and dismissed from service.

The Organization contends that Carrier prejudged Claimant by withholding him from service and that Carrier acted improperly because Claimant was withheld from service and charged with the Rule 1.15 violation by an ARASA-represented supervisor rather than a member of management. We rejected these identical arguments in Award No. 47. We reiterate the

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holdings of Award No. 47 and reject the arguments again.

The Organization also objects that a Carrier official other than the hearing officer signed the notice of discipline. However, the record reveals that there were no contested issues that turned on an evaluation of the credibility of the witnesses. It has consistently been held, under similar circumstances, that having a Carrier official other than the hearing officer sign the letter of discipline is not a ground for setting aside the discipline. *See* NRAB Third Division Award No. 31625 and awards cited therein.

There was no dispute that Claimant was absent without authority on October 7, 2003. Claimant offered several excuses, none of which are persuasive. First, Claimant testified that he overslept and slept through his alarm, but oversleeping does not provide an acceptable excuse for a failure to protect one's assignment. Second, Claimant testified that he called what he believed to be his supervisor's cell phone number. The record reveals, however, that the supervisor had acquired a new cell phone number and had provided it to the employees on the work schedule. Claimant admitted that he did not read the ancillary information that appeared on the work schedule. Thus, Claimant has only himself to blame for not having his supervisor's current cell phone number. Third, Claimant testified that although he was familiar with the paging system, he failed to page his supervisor because he had neglected to bring the supervisor's pager number. Here too, Claimant has only himself to blame for his predicament. We conclude that Carrier proved the charge by substantial evidence.

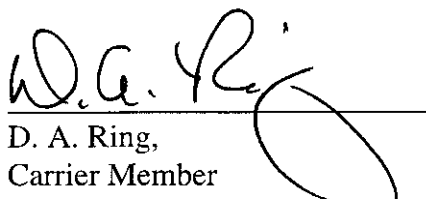
The instant violation was Claimant's third Rule 1.15 violation within a 36-month period. Under Carrier's UPGRADE policy, dismissal was called for. Under similar circumstances, we have deferred to this policy. *See* Award No. 47. We see no reason to deviate from Award No. 47 and conclude that the penalty was not arbitrary, capricious or excessive.

AWARD

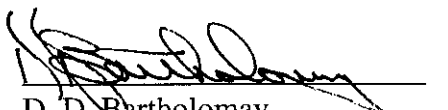
Claim denied.



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