

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 69
)
) Award No. 69
)

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 Extra Gang Laborer Chad J. Allred for his alleged violation of Union Pacific Rules 1.13 and 1.6 for allegedly making threatening and immoral comments towards fellow gang members on October 10, 2003 through and including October 12, 2003 and thereafter was without just and sufficient cause, based on unproven charges and in violation of the Agreement (System File J-0348-82/1390242D).
2. As a consequence of the violations referred to in Part (1) above, Extra Gang Laborer Chad J. Allred shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered. His record shall also be cleared of this incident.

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 16, 2003, Carrier notified Claimant to report for a formal investigation on November 5, 2003, concerning his alleged violation of Rules 1.13 and 1.6 by making threatening and immoral comments toward his fellow gang members on October 10 - 12, 2003 and thereafter. Claimant was withheld from service pending investigation. The hearing was held as scheduled. On November 24, 2003, Carrier notified Claimant that he had been found guilty of the charge and dismissed from service.

The record reflects that on the dates in question, Claimant made comments to his

coworkers about murdering his wife, cutting her up and mixing her in chili. He also made comments that he would do the same to some of his coworkers. The Organization maintains that Claimant was only joking and engaging in shop talk, but statements of this nature are no joking matter. Given the nature of Claimant's threats, Carrier had no choice but to withhold him from service pending investigation. Moreover, there is no question that Carrier proved the charge by substantial evidence.

The critical issue is the severity of the discipline. The record reflects that at the time of the incidents, Claimant was in the midst of a very difficult divorce and was having significant emotional difficulties coping with his wife's acts of adultery. The record further reflects that Claimant was controlling his behavior while he was in counseling but had stopped the counseling, apparently because he had exhausted the maximum number of sessions covered by medical insurance. The record also suggests that Claimant was not taking his medication regularly.

Claimant's co-workers reported the statements to Claimant's supervisor. However, they testified that they did not feel threatened and did not believe that Claimant would carry out the threats. Rather, they reported the matter out of concern for Claimant and out of a belief that he needed help.

The record thus reflects that these incidents were as much a medical matter as a disciplinary matter. They called for a combination of disciplinary and medical action. Accordingly, we shall order that Claimant be reinstated to service but without compensation for time held out of service. Reinstatement shall be conditions on the following:

- Within one week following notification of this conditional reinstatement, Claimant shall contact Carrier's Employee Assistance Program
- Claimant shall follow all treatment recommendations of the EAP, shall successfully complete treatment and shall follow all post-treatment recommendations of the EAP.
- Claimant must be released to return to duty by the EAP and must pass a return-to-duty physical, including drug screen, before he will be reinstated.
- Following his return to service, Claimant will be on probation for a period of 12 months during which time failure to comply with any requirements of the EAP or any safety or other serious rule violation shall result in Claimant reverting to the status of a dismissed employee.

AWARD

Claim sustained in accordance with the Findings.

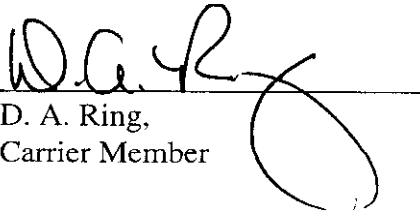
PLB 6302
Awd 69

ORDER

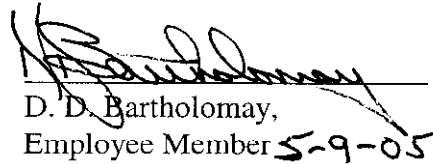
The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



D. D. Bartholomay,
Employee Member 5-9-05

Dated at Chicago, Illinois, April 22, 2005