

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 71
)
) Award No. 70
)

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 Foreman J. P. Beach for his alleged insubordination on August 29, 2003 was without just and sufficient cause and in violation of the Agreement (System File W-0448-154/1391573D).
2. As a consequence of the violations referred to in Part (1) above, Foreman J. P. Beach 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 12, 2003, Carrier notified Claimant to report for a formal investigation on September 25, 2003, concerning his alleged violation of Rule 1.6(3) by his insubordination on August 29, 2003 when he allegedly failed to follow instructions to continue to unload ties with Gang 9096 on the Rawlins Subdivision. The hearing was postponed to October 28, 2003, by mutual agreement of Carrier and the Organization. It was postponed again by mutual agreement to November 18, 2003, and postponed a third time to December 2, 2003. On December 2, 2003, Claimant did not appear and the hearing proceeded in absentia over the Organization's objection. On December 19, 2003, Carrier notified Claimant that he had been found guilty of the charge and dismissed from service.

The Organization contends that Claimant's rights to a fair and impartial investigation were violated when Carrier refused to grant Claimant's request to postpone the December 2,

2003, hearing and, instead proceededn absentia. We are unable to agree. The record reflects that the Organization requested a further postponement on Claimant's behalf on the ground that Claimant's father was ill. Carrier responded that, in light of the three prior postponements, any further postponement would be conditioned on the furnishing of documentation from Claimant's father's doctor of the illness. When no documentation was furnished, Carrier proceeded with the hearing as scheduled.

Under the circumstances, Carrier's actions were reasonable. There had already been three postponement, two of which had been granted at Claimant's or the Organization's request. Carrier did not refuse to postpone the December 2 hearing. It simply made a reasonable request for documentation. That request was not responded to. Furthermore, at no subsequent time during handling on the property did Claimant provide documentation of his father's alleged illness. Accordingly, we conclude that Carrier acted appropriately in proceeding in absentia on December 2, 2003.

On September 24, 2003, the Organization advised Carrier that Claimant had left his diary in a Carrier truck when he was removed from service. The Organization requested that Carrier provide it with the diary because the diary contained information relevant to securing witnesses. Carrier responded that it searched and was unable to locate the diary. There is no evidence that Carrier destroyed the diary or did anything untoward with respect to the Organization's request. We have no reason to believe that Carrier did anything other than conduct an unsuccessful but good faith search for the diary. The ultimate responsibility for the inability to secure the diary must rest with Claimant who neglected to take it with him when he was removed from service. The matter of the diary provides no basis for upsetting the discipline.

The record reflects that on August 29, 2003, Claimant was running the Form B protection for Gang 9096 which was unloading ties along the Rawlins Subdivision. At 6:30 p.m., Claimant called the Track Supervisor, advised that he had completed taking down the Form B boards and was going home. The Track Supervisor advised Claimant that the Gang was going to continue unloading ties and that Claimant was to stay and serve as a lookout for the Gang. Claimant refused and went home.


The record further reflects that the Assistant Foreman for Gang 9096 relayed to Claimant instructions from the Gang Foreman to serve as a lookout while the Gang continued unloading after the Form B had expired. Claimant refused to do so and went home.

The record thus contains substantial evidence that Claimant was guilty of insubordination as charged. Under Carrier's UPGRADE, insubordination warrants discipline of Level V, dismissal. Given the seriousness of the offense and the absence of mitigating factors, we cannot say that the penalty imposed was arbitrary, capricious or excessive.

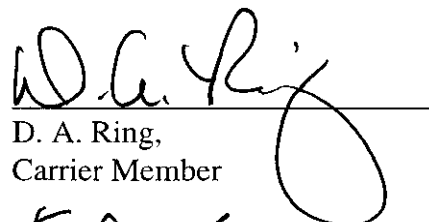
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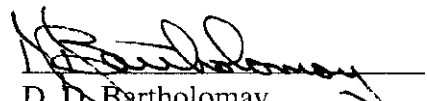
Claim denied.



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