

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)

) Case No. 72

)

) Award No. 71

)

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 dishonesty in claiming time for August 18, 19, 20 and 21, 2003 was without just and sufficient cause and in violation of the Agreement (System File W-0448-155/1391574D).
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 dishonesty in claiming time for work on August 18, 19, 20 and 21, 2003, that he did not perform. 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.

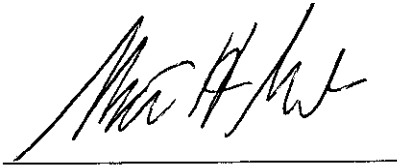
In Case No. 71, Award No. 70, we denied Claimant's claim concerning his dismissal for insubordination. In light of our decision in Award No. 70, there is no relief that we could afford Claimant in the instant case, even if we were to find merit in his claim. Accordingly, we hold

PLB 6302
Awd 71

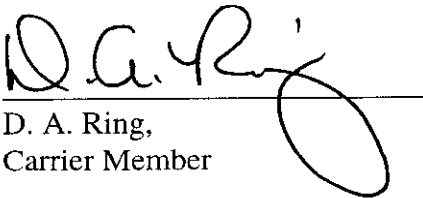
that the instant claim is moot.

AWARD

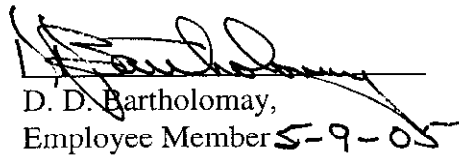
Claim dismissed.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



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

5-9-05

Dated at Chicago, Illinois, April 22, 2005