

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 76
)
) Award No. 76
)

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

Hearing Date: September 15, 2005

STATEMENT OF CLAIM:

1. The dismissal of Laborer Dale J. Robinson for allegedly making terroristic threats to other employees from February 12 to February 18, 2004, was without just and sufficient cause and in violation of the Agreement (System File J-0448-55/1393984).
2. Laborer Dale J. Robinson shall now be reinstated to service with seniority and all other rights unimpaired and compensated for 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.

Claimant was dismissed for allegedly failing to immediately report a personal injury and falsifying a personal injury form. On October 30, 2003, Carrier, the Organization and Claimant agreed that Claimant would be reinstated to service on a leniency basis and that his dismissal would be reduced to a suspension for time served. They further agreed that upon returning to service, Claimant would be subject to an 18-month probationary period and, "In the event he commits a serious rule violation during this eighteen (18) month probationary period, he will be removed from service without a formal investigation as provided by the applicable Agreement Rule and he will revert back to the status of a dismissed employee." On February 20, 2004, Carrier notified Claimant that he was reverted back to the status of a dismissed employee because he had, on three occasions between February 12 and 18, 2004, threatened to kill a Manager Track

Maintenance and persisted in making such threats despite having been warned by his foreman to stop.

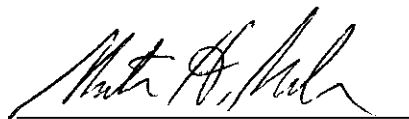
The Organization argues that Carrier violated Rule 48 by dismissing Claimant without affording him a formal investigation. The Organization further argues that if Claimant had been given a hearing, he would have successfully defended himself against the charges. We are unable to agree.

In the leniency reinstatement agreement of October 30, 2003, Claimant clearly and unequivocally waived his right to a hearing prior to dismissal for serious rules violations committed during the 18-month probationary period. Threatening to kill the MTM was certainly a serious rule violation and it occurred during the probationary period. As stated in Public Law Board 5288, Award No. 5, the leniency reinstatement agreement "rises in dignity above the basic schedule agreement. The Claimant is governed thereby."

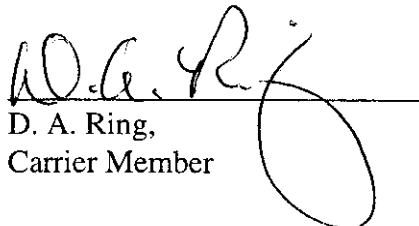
We further agree with PLB 5288 that we have "only the authority to review the case to determine if the Carrier had sufficient, credible evidence to find that Claimant violated its rules." In the instant case, Carrier clearly had such evidence. The threats to kill the MTM came to the attention of another MTM. Carrier verified the information with Claimant's foreman and a sectionman. Furthermore, Claimant's foreman told Claimant to stop making such threats but Claimant persisted. Accordingly, we find that Carrier acted in accordance with the October 30, 2003, leniency reinstatement agreement and that the claim must be denied.

AWARD

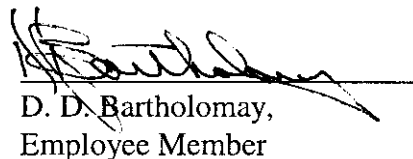
Claim denied



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, January 20, 2006