

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 78
)
) Award No. 78
)

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 Agreement was violated when Carrier terminated the seniority of Mr. Stan C. Geertz on September 10, 2003 (System File C-0448-103/1398866).
2. Mr. Stan C. Geertz 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.

On August 6, 2003, Claimant was brought to the nurse's station because he was incoherent. The nurse check his blood sugar and found it to be abnormally high. She had him transported to the hospital by ambulance. After being released from the hospital, Claimant was found by a track inspector walking along the tracks. The track inspector drove Claimant to the tool house and asked him to contact his supervisor. Claimant's supervisor told Claimant to go home and contact his personal physician. Claimant was placed on a medical leave of absence.

On the same day, August 6, 2003, the Manager Track Maintenance wrote Claimant requesting detailed medical information concerning Claimant's condition, to be supplied by August 18, 2003. The letter was sent certified mail - return receipt requested. Claimant signed for the letter but did not respond.

On October 9, 2003, the MTM sent a follow-up letter, again requesting the information. The letter was returned to Carrier unclaimed and Claimant again failed to respond.

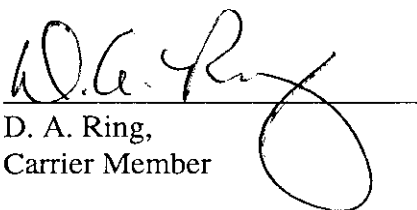
On November 5, 2003, the MTM again wrote Claimant certified mail - return receipt requested - giving Claimant until November 15, 2003, to provide the requested medical information and warning him that failure to comply or to return to work by December 4, 2003, could result in automatic forfeiture of his seniority. Claimant signed for the letter but again failed to respond. On December 10, 2003, Carrier terminated Claimant's seniority in accordance with Rule 25.

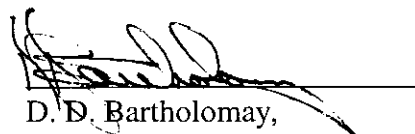
There is no question that Claimant's failure to respond justified Carrier in terminating Claimant's seniority. Rule 25 is self-executing. No further action, beyond notifying Claimant that his seniority had been terminated was required. We recognize that there is considerable precedent for the proposition that substantial and compelling circumstances may mitigate against the harsh literal operation of such self-executing rules. However, the record in the instant case is devoid of any evidence of such mitigating circumstances.

AWARD

Claim denied



Martin H. Malin, Chairman

D. A. Ring,
Carrier Member

D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, January 20, 2006