

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 84
)
) Award No.82
)

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 Welder Helper G. Gallegos for his allegedly making threats to fellow employees and creating violence in the workplace was without just and sufficient cause, in violation of the Agreement and excessive and undue punishment (System File J-0448-65/M4-UP314).
2. Welder Helper G. Gallegos 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 September 13, 2004, Carrier notified Claimant to report for an investigation on September 29, 2004. The notice charged Claimant with allegedly violating Rules 1.13 and 1.6(6) and (7), and Carrier's Violence and Abusive Behavior in the Workplace Policy by making threats to fellow employees on July 29, 2004, and August 30, 2004. The hearing was postponed to and held on October 12, 2004. On October 28, 2004, Carrier notified Claimant that he had been found guilty of the charges and dismissed from service.

The Organization contends that Carrier violated Rule 48 by withholding Claimant from service pending the investigation. We do not agree. Rule 48(0) expressly gives Carrier the right to withhold an employee from service pending investigation for serious or flagrant violations of

Carrier's rules. Rule 48(o) clearly applied to the instant charges and Carrier acted appropriately in withholding Claimant from service.


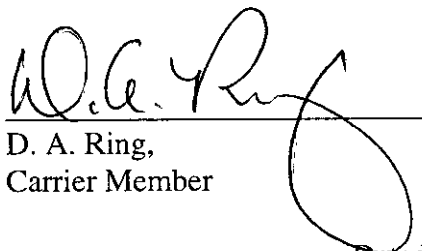
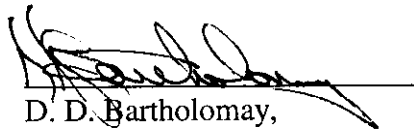
The Organization also contends that Carrier conducted a hearing on September 9, 2004, and denied Claimant his right to be represented at the hearing. We do not agree. The record reflects that a Carrier police Special Agent interviewed Claimant on September 9, 2004, concerning complaints that had been lodged against him. This was not the formal investigation hearing provided for in Rule 48. Indeed, the Special Agent's responsibilities were to complete the interviews and make a report. The Special Agent had no authority to take disciplinary action against Claimant and did not do so. We have considered other procedural arguments raised by the Organization and find that they lack merit.

We have reviewed the record carefully. We have concluded that Carrier proved the charge by substantial evidence. Five individuals testified that on or about July 29, 2004, during the gang's warm-up exercises, Claimant told the gang members to exercise by placing their hands over their heads as practice because he was going to bring his gun to work. The individuals testifying to the threat included several of Claimant's coworkers on the gang. They did not perceive it as a joke but took it as a serious threat. Although they may have differed by a few days with respect to the exact date of the incident, all were consistent in the salient details of the incident.

Claimant's behavior in threatening violence in the workplace need not be tolerated by Carrier. The record contains no evidence of any mitigating circumstances. Clearly, the penalty imposed was not arbitrary, capricious or excessive.

AWARD

Claim denied


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

Dated at Chicago, Illinois, January 20, 2006