

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)

) Case No. 93

)

) Award No. 89

)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

D. A. Ring, Carrier Member

Hearing Date: April 4, 2006

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier refused to allow Mr. Tyson W. Widler to exercise his seniority rights beginning on October 7, 2004 and continuing (System File RJ-0421-1414407).
2. As a consequence of the violation referred to in Part (1) above, Claimant Tyson W. Widler shall now be reimbursed for all wages lost in this connection, The period of time involved in this claim commenced October 7, 2004 and subsequent days thereto until such time Claimant Widler is allowed to exercise seniority.

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 established seniority in four classifications within the Track Subdepartment. In 20003, Claimant was promoted to Manager Track Maintenance, a non-Agreement position. On August 30, 2004, Claimant was terminated from the MTM position for misuse of a Carrier Visa procurement card. The Organization contends that Carrier violated the Agreement by not allowing Claimant to exercise seniority in one of the four classifications covered by the Agreement.

Rule 22(c)(2) provides in relevant part:

Employees retaining seniority who vacate an official, supervisory or excepted position for any reason, whether with the Company or the Brotherhood, may return to their former position or may exercise rights over any junior employee who is holding a position that has been bulletined during their absence, except that if the employee's former position has been abolished or has been acquired by a senior employee through the exercise of displacement rights, the returning employee may then exercise seniority rights over junior employees as provided in Rule 2 1. Employees desiring to return from official, supervisory or excepted positions must give management and the General Chairman five (5) calendar days' advance written notice before returning. The seniority status and ranking of promoted personnel whose seniority has been frozen will be adjusted immediately prior to their exercise of seniority rights by the parties hereto.

Unless agreed to otherwise by Management and the General Chairman, the returning employee will have no more than sixty (60) calendar days after being released to get affairs in order and return as specified herein. Returning employees who fail to return to service within said time limit or who are unable to do so, will be considered furloughed.

The record reflects that Claimant never gave Carrier written notice of intent to return to his former position or to exercise seniority over an applicable junior employee. No copy of any such written notice was submitted on the property. Claimant's own statement averred that he orally notified management of his intent to return but does not claim to have given written notice. Yet, the plain language of Rule 22(c) requires the giving of written notice. Oral notice is not sufficient.

We conclude that the instant case is controlled by NRAB Third Division Award No. 35869, wherein the Board held:

As written, the five-day notice is a mandatory condition precedent to the retention of seniority and the ability to return-to-service under the Agreement. The remainder of Rule 22(c) strongly suggests that the five-day notice must be provided during the 60 calendar day period after vacating the non-Agreement position. If not so provided, the context suggests that the Carrier is entitled to treat a former employee as voluntarily resigning from further Carrier service and relinquishing any previously retained seniority under the Agreement. No bargaining history was presented on this record to demonstrate that a contrary interpretation was intended by the parties.

We follow Award No. 35869. Because Claimant never gave the required written notice to Carrier, the claim must be denied.

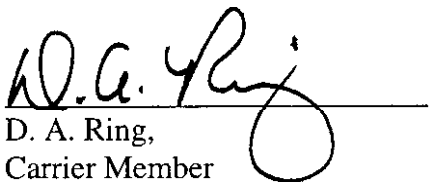
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AWARD

Claim denied.

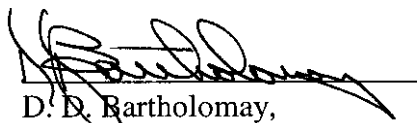


Martin H. Malin, Chairman



D. A. Ring,
Carrier Member

5/30/06



D. D. Bartholomay,
Employee Member 5-30-06

Dated at Chicago, Illinois, May 22, 2006