

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 6302**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

and

**UNION PACIFIC RAILROAD COMPANY**

)

) Case No. 101

)

) Award No. 92

)

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 dismissal of Assistant Foreman Dwayne L. Williams for his allegedly leaving Company property without authorization on February 15, 2005 was without just and sufficient cause, in violation of the Agreement and based on an unproven and disproven charge (System File C-0548-104/1426271).
2. As a consequence of the violation referred to in Part (1) above, Assistant Foreman Dwayne L. Williams 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 February 23, 2004, Claimant was notified by Carrier that because he had left the jobsite voluntarily without authorization on February 15, 2005, he was considered as having forfeited his employment pursuant to Rule 48(L) of the controlling Agreement. In accordance with Rule 48(L), on February 25, 2005, the Organization requested a hearing on Claimant's behalf. On March 2, 2005, Carrier notified Claimant to report for a hearing on March 15, 2005. The hearing was held as scheduled. On March 31, 2005, Carrier notified Claimant that he had been found guilty of the charge and that he was dismissed from service.

The Organization has raised several procedural arguments that do not require substantial

discussion. We have considered them carefully. None of the arguments singularly or cumulatively provide a basis for overturning the discipline.

The critical issue is whether Carrier proved the charge by substantial evidence. There is no dispute that Claimant left the jobsite early on February 15, 2005. Claimant testified that he left between 7:30 and 8:00 a.m. The Track Supervisor testified that he looked for Claimant between 5:30 and 6:00 a.m. and could not locate him. Claimant left with another employee who was driving Claimant to Denver to pick up a car. The Track Superintendent and Claimant both testified that Claimant requested and received permission to leave at 12 noon. The Track Superintendent testified that he also told the tie gang that they would probably have a "4 and go," i.e. that they would probably be released after four hours because they were unable to get track time. However, he later informed the gang that they would have to work their entire shifts. According to the Track Supervisor, he never released any employees to leave early.

Claimant disputed the Track Supervisor's testimony. Claimant maintained that the Track Supervisor authorized Claimant and the employee who was driving him to Denver to leave early with a 4 and go. Evidence also reflected that Claimant and the other employee were the only ones to leave the jobsite early.

As an appellate body, we are in a comparatively poor position to assess witness credibility and to resolve conflicts in the evidence. Consequently, we defer to the resolution of conflicts in the evidence made on the property as long as such resolution is reasonable. In the instant case, we see no reason to deviate from this general approach. Accordingly, we defer to the factual findings made on the property and hold that Carrier proved the charge by substantial evidence.

However, upon careful consideration of all of the facts and circumstances, we have concluded that the penalty of dismissal was excessive. Accordingly, Claimant shall be reinstated to service with seniority unimpaired but without compensation for time out of service.

### **AWARD**

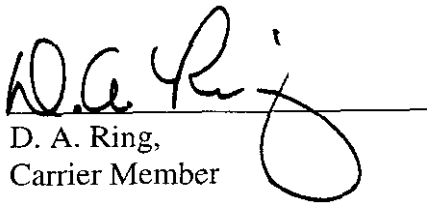
Claim sustained in accordance with the Findings.

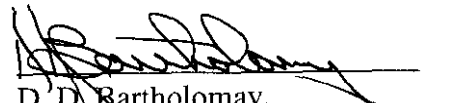
PLB 6302  
Award 92

**ORDER**

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto

  
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