

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 130
UNION PACIFIC RAILROAD COMPANY) Award No. 105
_____)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
B. W. Hanquist, Carrier Member

Hearing Date: April 22, 2008

STATEMENT OF CLAIM:

1. The Level 5 UPGRADE discipline assessment (dismissal from service) to Mr. T. D. Hovis for an alleged violation of Union Pacific Rule 1.4(4) Dishonesty, effective April 3, 2005 was not justified
2. As a consequence of the violation refereed to in Part (1) above, the Claimant shall have the charge letter be removed from all company records, the Railroad will compensate him for all loss of time, vacation rights, including the reinstatement to all seniority rights unimpaired and for personal expenses to be reimbursed back to him to attend the investigation.

FINDINGS:

Public Law Board No. 6402 upon the whole record and all of 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 October 8, 2007, Claimant was notified to report for a formal investigation on October 13, 2007, concerning his alleged withholding or furnishing of incorrect information on his employment application in violation of Rule 1.4(6). The hearing was postponed to and held on November 6, 2007. On November 16, 2007, Claimant was advised that he had been found guilty of the charge and had been dismissed from service.

The Organization raised a number of procedural objections. We have reviewed the

record and find that none merit detailed discussion. It is sufficient to note that we find that Carrier afforded Claimant a fair and impartial investigation.

The record reflects that on his employment application Health History Form, completed August 1, 2006, Claimant responded, "No," to the following questions, among others which asked if he had ever had:

problems, injuries or surgery involving the shoulders, arms, elbows, wrists, hands, fingers?

Tendinitis/Bursitis?

weakness/ numbness or tingling of your arms, hands, legs or feet?

any other problems with bones, joints or muscles?

He also checked, "No," in response to the question, "Do you now have or have you ever had any deformity, defect, disease, disability, injury, physical, mental or emotional condition whatsoever which under strain or in the performance of duties requiring physical or mental awareness-alertness and muscular activities might be aggravated or which might result in your incapacitation or which might interfere with safe and efficient performance of your work?"

Medical records from Claimant's doctor indicated that on January 31, 2006, he was treated for pain and tendinitis in his left shoulder. A Medical History and Physical Examination Report from Claimant's Orthopaedist, dated March 26, 2007, reported that "three years ago, he ruptured his biceps tendon distally just above the elbow. He was self-employed and could not really do anything for it at this time; he had to keep working. Since that time, he has had problems with his left shoulder, left hand and continues to have problems."

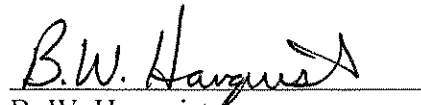
Claimant did not disclose these conditions on his Health History Form. Carrier clearly proved the charge by substantial evidence.

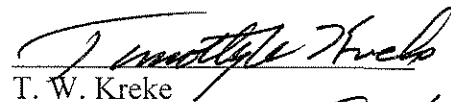
Claimant was a very short term employee. His dishonesty on his application is a very severe offense. We cannot say that the penalty of dismissal was arbitrary, capricious or excessive.

AWARD

Claim denied.


Martin H. Malin, Chairman


B. W. Hanquist
Carrier Member


T. W. Kreke
Employee Member

Sept. 17, 2008

Dated at Chicago, Illinois, August 31, 2008