

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 135
UNION PACIFIC RAILROAD COMPANY) Award No. 112
_____)

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

Hearing Date: December 17, 2008

STATEMENT OF CLAIM:

1. The dismissal of Mr. Dwayne E. Walton for alleged violation of Rule 14 of the Agreement in connection with being absent without authority in excess or thirty (30) days is unjust, unwarranted and in violation of the Agreement (System File CEI00407R/1479967 MPR).
2. As a consequence of the violation outlined in Part (1) above, Mr. Walton is entitled to the full remedy detailed in Rule 21(f), effective November 1, 2001.

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.

Beginning in July 2006, Claimant was granted a medical leave of absence. Claimant was in a treatment facility for substance abuse. Claimant was released to return to service effective January 15, 2007. Prior to his leave of absence, Claimant was assigned as a Machine Operator with Gang 1204. Under Rule 13(f) of the Agreement, upon being released to return to service, Claimant was obligated to return to his former position unless the position had been abolished or a senior employee had exercised displacement rights thereon. The first day that Claimant's former position was available to him was January 22, 2007. Claimant did not return to his former position and on February 28, 2007, pursuant to Rule 14(b), Carrier sent Claimant a letter advising him that he had been absent for a period of at least thirty days and affording him seven days from receipt of the letter to show cause for his absence. The letter was received March 6,

2007, and Claimant contacted Carrier and explained that he had been placing bids on other positions and believed that this was sufficient to protect his seniority. Under Rule 14(c) Carrier had the option to accept Claimant's explanation and allow him to return to service or notice him for investigation in accordance with Rule 21. Carrier elected the latter option and the hearing was held on April 13, 2007. On May 2, 2007, Carrier notified Claimant that he was dismissed from service.

At the hearing, Claimant testified without contradiction that he did not realize he had to return to his former position to protect his seniority and that he believed, albeit erroneously, that he was protecting his seniority by bidding on other positions. Claimant explained that he was bidding on other positions because, rather than return to his former position in Chicago, he wished to remain in Houston where he was actively involved in a substance abuse recovery community. Claimant further testified that if he had realized that he had to return to his former position to retain his employment with Carrier he would have done so.

The record is clear that Claimant was in violation of Rules 13(f) and 14(a). However, the record is also clear that Claimant did not abandon his job and that he made a good faith, albeit erroneous and insufficient, effort to protect his seniority. Under the circumstances, the Board holds that Claimant shall be reinstated to service with seniority unimpaired but without compensation for time out of service.

AWARD

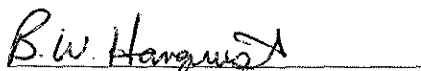
Claim sustained in accordance with the Findings.

ORDER

The Board having determined that an award favorable to Claimant be issued, Carrier is ordered to implement the award within thirty days from the date two members affix their signatures hereto



Martin H. Malin, Chairman



B. W. Hanquist
Carrier Member 2-18-09



T. W. Kreke
Employee Member 2-18-09

Dated at Chicago, Illinois, January 31, 2009