

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 110
UNION PACIFIC RAILROAD COMPANY) Award No. 116
_____)

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

STATEMENT OF CLAIM:

1. The dismissal from service of Mr. K. W. Collins for his alleged violation of Union Pacific Rule 1.5, the Carriers Drug and Alcohol Policy and Federal Regulations (Title 49 Part 382 Section 213) and the Return to Work Waiver Agreement of July 30, 2004 was not justified. (System File MW-07-08/1464518 MPR).
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to his former position, be paid for all time lost, have his seniority and benefits reinstated intact, his personal record exonerated of all charges and receive expenses for attending the hearing.

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 November 14, 2006, Claimant was notified to report for a formal investigation on December 11, 2006, concerning his allegedly testing positive for an illegal substance during a follow-up drug test on November 3, 2006. The hearing was postponed to January 9, 2007. The Organization filed the instant claim protesting the postponement.

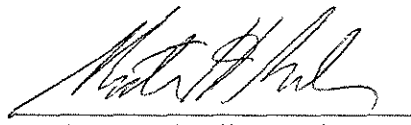
Following the hearing on January 9, 2007, Claimant was found guilty of the charge and dismissed from service. The Organization filed a second claim on Claimant's behalf, appealing

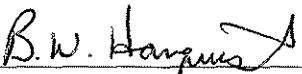
his dismissal. The Organization argued that Claimant's dismissal violated the Agreement because of the improper postponement and because Carrier failed to prove the charges by substantial evidence. That claim came before this Board in Case No. 120, Award No. 99. In Award No. 99, we held that the postponement did not violate the Agreement and that Carrier proved the charges by substantial evidence. We denied the claim.

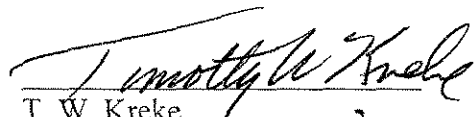
We have reviewed the record of the on-property handling of the instant claim very carefully. We find that the instant claim merely duplicates the procedural arguments presented in the claim before us in Case No. 120, Award No. 99. Thus, we have already ruled on the issues raised by the instant claim. Accordingly, the instant claim must be dismissed as moot.

AWARD

Claim dismissed.


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