

PUBLIC LAW BOARD NO. 6402

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

STATEMENT OF CLAIM:

- ## FINDINGS:

On December 11, 2007, Claimant was notified to report for a formal investigation on December 18, 2007, concerning his alleged willfully leaving his place of assignment without authority on December 8, 2007. The hearing was held as scheduled. On January 4, 2008,

Claimant was advised that he had been found guilty of the charge and had been dismissed from service.

The record reflects that on December 8, 2007, Claimant was assigned as a Trackman on Gang 9168. At 7:00 a.m., Claimant answered the roll call at the start of the morning job briefing. Claimant testified that he became ill almost immediately thereafter and spent most of the time during the job briefing in the portable restroom. Claimant then decided to leave because he was sick. However, Claimant did not contact his Foreman or the Track Supervisor to obtain permission to leave. At around 7:45 a.m., the Foreman noticed that Claimant was missing and notified the Track Supervisor. The Track Supervisor was supervising two drug screens. When the drug screens were completed, around 9:45 a.m., the Track Supervisor called Claimant's cell phone. Claimant told the Track Supervisor that he was headed toward Palestine. The Track Supervisor asked Claimant if Claimant realized he had walked off the job and Claimant responded that "he could have done it better, but that was that."


At the hearing Claimant maintained that he tried to call the Foreman on the Foreman's cell phone, got no answer and left a voice mail message. He testified that he called a number he had had for the Foreman when he previously worked under the Foreman the prior year. Yet, the number Claimant claimed to have called was not the Foreman's cell phone number and the record is clear that the Foreman's correct cell phone number was available to all members of the Gang. It was Claimant's responsibility to have the correct contact information for his Foreman.

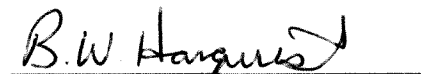
Following Claimant's dismissal, the Organization filed the instant claim and enclosed with the claim a copy of Claimant's cell phone records. The phone records were not provided at the investigation and thus fall outside of the record that may be considered in determining whether Carrier proved the charges by substantial evidence. In any event, far from exonerating Claimant, the phone records drive one more nail into Claimant's coffin. The records show that a call was placed to the number that Claimant allegedly believed was his Foreman's cell phone number on December 8, 2007, at 9:03 a.m. Thus, the call was made almost two hours after Claimant left the job. The phone records make it crystal clear that Claimant made absolutely no effort to secure authority prior to leaving the job shortly after 7:00 a.m. on December 8, 2007. Carrier proved the charges by substantial evidence.


Claimant had only one year and two months of service at the time he left the job without authority. The penalty of dismissal was in keeping with Carrier's UPGRADE policy and there is absolutely no evidence of any mitigating circumstances. We are unable to say that the penalty imposed was arbitrary, capricious or excessive.

AWARD

Claim denied.



Martin H. Malin, Chairman

B. W. Hanquist
Carrier Member 3-23-09

T. W. Kreke
Employee Member 3-23-09

Dated at Chicago, Illinois, February 26, 2009