

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6402**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 27
)
) Award No. 12
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
C. M. Will, Carrier Member

Hearing Date: January 21, 2002

STATEMENT OF CLAIM:

1. The dismissal of Truck Driver Mario E. Arredondo for his alleged violation of Rules 1.5, 1.6(1) and 1.6(2) and the Drug and Alcohol Policy and Procedures effective March 1, 1997 when he was arrested for allegedly driving while under the influence and leaving the scene of an accident on January 4, 1999 was without just and sufficient cause and excessive punishment (System File MW-99-109/1178380 MPR).
2. Truck Driver Mario E. Arredono shall now be reinstated to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered commencing January 4, 1999 and continuing until his reinstatement to service.

FINDINGS:

Public Law Board No. 6402, 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 January 11, 1999, Carrier notified Claimant to report for an investigation on January 18, 1999, in connection with his allegedly having been arrested on January 4, 1999, following an accident in which he struck another vehicle while operating a Carrier tractor trailer. The hearing was held as scheduled. On January 26, 1999, Carrier informed Claimant that he had been found guilty of the charges and dismissed from service.

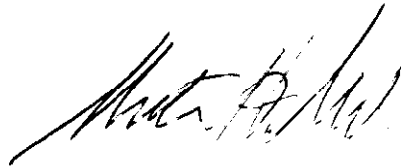
The record leaves absolutely no question that Carrier proved Claimant's guilt by substantial evidence. On January 4, 1999, while off duty, Claimant was driving a Carrier tractor-

trailer when he struck a pickup truck, causing approximately \$1,000 in damage to the pickup. Claimant did not stop at the accident scene but was chased and apprehended by local police. Claimant's blood alcohol level was approximately twice the legal limit for operation of a motor vehicle in the State of Texas, five times the FHWA limit and ten times Carrier's limit. Claimant was in clear violation of Rules 1.5, 1.6(1) and 1.6(2) and Carrier's Drug and Alcohol Policy.

The record further reveals that Claimant tested positive for marijuana in 1993. He was allowed a leniency reinstatement when he agreed to enter the Employee Assistance Program. Under Carrier's policy, an employee is not eligible for a second leniency reinstatement - EAP placement for a second offense within ten years. Under the circumstances, we cannot say that the penalty of dismissal was arbitrary, capricious or excessive.

AWARD

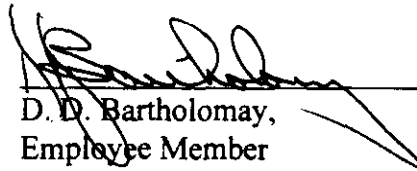
Claim denied.



Martin H. Malin, Chairman



C. M. Will,
Carrier Member



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, June 11, 2002.