

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

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 34
)
) Award No. 22
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: April 1, 2003

STATEMENT OF CLAIM:

1. The Level 5 (dismissal) assessed Foreman A. S. Mena for his alleged dishonesty when he entered false timekeeping/payroll information for hours worked on February 16 and 17, 2002, was without just and sufficient cause, based on an unproven charge and in violation of the Agreement (System File MW-02-70/1317312-D).
2. As a consequence of the violations referred to in Part (1) above:
"We now request that Claimant be paid and compensated and the charges be removed and the Level 5 discipline be removed from his personnel record, returned to active service with all charges be removed from the Claimant's personal record all wages at the Claimant's respective straight time rate of pay and any all overtime at the Claimant's respective overtime rate of pay acquired by the tie gang as outlined in the first paragraph of this letter, and this to be paid and compensated in addition to any and all other compensation the claimant may have already have received for the time lost and credit to be applied to Railroad Retirement, hospitalization, vacation, and to be compensated for any and all expenses acquired by Claimant by attending this investigation such as meals and mileage at the rate of \$.36.5 a mile."

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 March 22, 2002, Carrier notified Claimant to report for an investigation on April 1, 2002. The notice charged Claimant with alleged dishonesty by entering false timekeeping/payroll information on February 16 and 17, 2002. The hearing was held as scheduled. On April 18, 2002, Carrier informed Claimant that he had been found guilty of the charge and was dismissed from service.

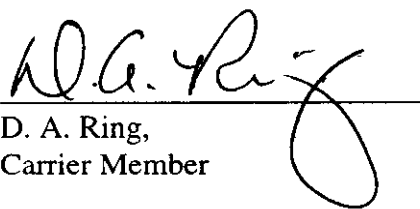
The instant case concerns the same Claimant who was before this Board in Case No. 35, Award No. 21. In that case, we denied the claim challenging Claimant's dismissal stemming from his falsification of payroll on January 11, 2002. Consequently, regardless of the outcome of the instant case, Claimant will remain in a dismissed status and will not be entitled to any relief. Therefore, we conclude that our award in Case No. 35, Award No. 21 has rendered the instant case moot.

AWARD

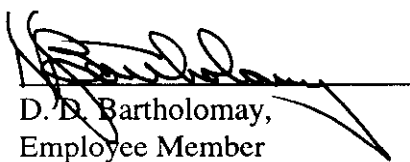
Claim dismissed.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



D. B. Bartholomay,
Employee Member

Dated at Chicago, Illinois, July 29, 2003.