

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

UNION PACIFIC RAILROAD COMPANY

)

) Case No. 56

)

) Award No. 36

)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

D. A. Ring, Carrier Member

Hearing Date: November 15, 2004

STATEMENT OF CLAIM:

1. The dismissal of Machine Operator H. D. Cooksey, III, for his allegedly being absent on October 20 and November 5, 2003, was without just and sufficient cause, excessive and undue punishment and in violation of the Agreement (System File MW-04-24/1385909D).
2. As a consequence of the violations referred to in Part (1) above, Machine Operator H. D. Cooksey, III, shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

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 November 12, 2003, Carrier notified Claimant to appear for an investigation on November 19, 2003. The notice alleged that Claimant was absent on October 20 and November 5, 2003, in violation of Rule 1.15. The hearing was held as scheduled. On December 10, 2003, Claimant was notified that he had been found guilty of the charge and dismissed from service.

The Organization has advanced numerous procedural arguments. We have reviewed all of those arguments and the transcript and find that Claimant was afforded a fair and impartial hearing and that none of the procedural arguments provides a basis for setting aside the discipline.

The record reflects that on October 20, 2003, Claimant was absent from work without

authority. Although Claimant maintained that he was ill on that day, the record reflects that Claimant failed to call the Track Supervisor to report his absence. The record further reflects that on November 5, 2003, Claimant arrived for work after the job briefing had concluded and the Track Supervisor sent him back to the motel. Claimant testified that he was late because he had gotten lost. Of course, it was Claimant's responsibility to find his way to the job site on time. Furthermore, Claimant failed to call in and report that he would be late. Carrier clearly proved the offense charged by substantial evidence.

We turn to the penalty assessed. The Organization contends that the penalty of dismissal was arbitrary, capricious and excessive for these attendance violations. The record reflects that on August 15, 2003, Claimant received a letter of reprimand, UPGRADE Level 3, for being absent without authority on July 23, 2003, in violation of Rule 1.15. On June 7, 2002, Claimant received a letter of reprimand, UPGRADE Level 3, for being tardy on June 2, 2002. On May 3, 2003, Claimant received a letter of reprimand, UPGRADE Level 2, for being tardy on May 1, 2002. On February 18, 2002, Claimant received discipline at UPGRADE Level 1 for being tardy on February 4 and 7, 2002.

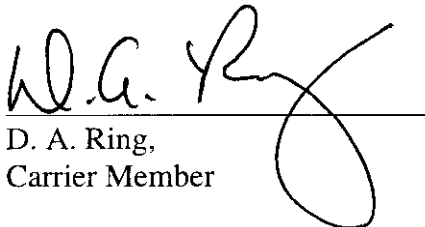
Carrier's UPGRADE policy clearly provides for dismissal of an employee who violates the same rule three times within a thirty-six month period. Awards of several boards have consistently upheld the application of this "three strikes and you're out" policy to attendance violations. See Public Law Board 6809, Case No. 5, Award No. 3 and awards cited therein. Considering the record as a whole, we cannot say that the penalty of dismissal was arbitrary, capricious or excessive.

AWARD

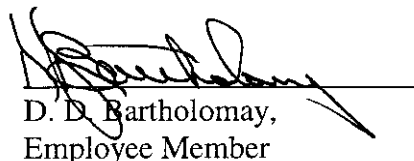
Claim denied.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, February 10, 2005