

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)

) Case No. 64

)

) Award No. 44

)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

D. A. Ring, Carrier Member

Hearing Date: May 23, 2005

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier terminated the seniority of Welder Scot A. Shelton in a letter dated May 5, 2004 (System File TO4-19/1403131 D).
2. As a consequence of the violations referred to in Part (1) above, Welder Scot A. Shelton 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.

In September 2003, Claimant was dismissed from service for allegedly falsifying time during the first half of July 2003. On September 18, 2003, Claimant signed a leniency reinstatement agreement, whereby he returned to service subject to an eighteen month probationary period. He returned to service in October 2003.

In March 2004, Claimant went on vacation. He did not return to work following his vacation. By letter dated May 5, 2004, Carrier advised Claimant that he had been absent without authority since March 3, 2004. Carrier further advised Claimant that employees absent without authority for thirty days or more may be treated as having resigned. Carrier further advised Claimant that he was to show good cause for not being terminated within seven days of receipt of the letter.

Carrier's actions were taken pursuant to Rule 14 of the Controlling Agreement which provides:

- a) Employees who are continuously absent without authority from their position for a period of thirty (30) or more calendar days may be treated as having resigned and their names removed from the seniority roster.
- b) Before an employee is considered as having resigned and his name removed from the roster, the employee will be notified at his last known address by Certified Mail - Return Receipt Requested that failure to return to service to show cause within seven (7) calendar days of receipt of the letter will be treated as a voluntary resignation and his name removed from all seniority. A letter mailed to the last address of record with the Carrier will be considered delivered. A copy of such letter will be sent to the General Chairman.

By letter dated June 5, 2004, Claimant responded that he was in an in-patient substance abuse treatment program, that the letter was received by his mother on May 24, 2004, who was unable to deliver it to Claimant until June 2, 2004, and that he had notified Carrier's EAP of his in-patient treatment program and was contacted by an unnamed Carrier employee who told him that he was on FMLA leave.


It is undisputed that Claimant's June 5, 2004, letter did not comply with Rule 14(b) which required Claimant to show good cause within seven days of receipt of the letter notifying him that he was absent without authority. The Organization contends that compliance with the seven day deadline should be excused under the circumstances. The Organization argues that in his in-patient treatment program, Claimant could not receive mail or telephone calls and that Claimant's seventy year old mother was unable to get the letter to Claimant any sooner. However, Rule 14 is clear that the notice of being absent without authority is considered delivered when addressed to an employee's last address of record with the Carrier. That was done in this instance and the Rule does not provide for extending the time to respond in circumstances such as these.

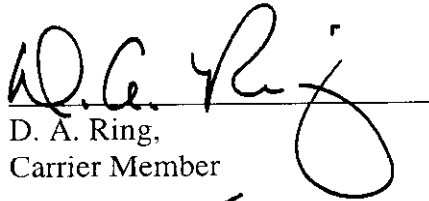
Claimant failed to show good cause for not being terminated. Carrier denied that Claimant was on FMLA leave. The probative value of Claimant's assertion that a Carrier employee telephoned him and advised him that he was on FMLA leave is substantially undermined by Claimant's failure to identify that individual by name or otherwise. Rule 14 is self-executing. No hearing is required unless the employee responds within the seven day time limit, which Claimant did not do. Under the circumstances, we find that Carrier did not violate the Agreement.

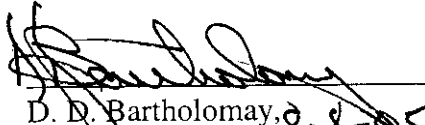
PLB 6402
Rwd 44

AWARD

Claim denied.


Martin H. Malin, Chairman


D. A. Ring,
Carrier Member
8.8.05


D. D. Bartholomay, 8-8-05
Employee Member

Dated at Chicago, Illinois, July 29, 2005