

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 63
)
) Award No. 45
)

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 dismissed Welder Scot A. Shelton on May 6, 2004, without a fair and impartial investigation and said dismissal being excessive and undue punishment (System File TO4-18/1403130).
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. During the probationary period, Claimant was subject to dismissal without a formal investigation for committing a serious violation of Carrier rules.

By letter dated May 6, 2004, Carrier notified Claimant that he was dismissed for violation of the leniency reinstatement agreement. The violation resulted from Claimant's felony conviction in 2002 for possession of a controlled substance. Carrier first learned of the conviction on April 28, 2004.

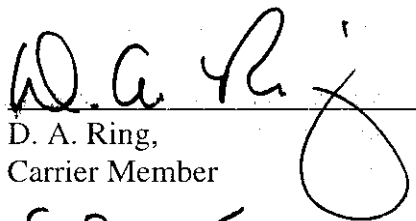
The parties dispute whether a felony conviction that occurred prior to Claimant's probationary period but that Carrier first learned of during the probationary period may justify dismissal without a formal investigation. We do not decide this issue. In Case No. 64, Award No. 44, we denied Claimant's claim resulting from the termination of his seniority for being absent without authority in excess of thirty days pursuant to Rule 14. Accordingly, even if we found in the instant case that Carrier violated the Agreement, in light of our holding in Award No. 44, Claimant would be entitled to no relief. Therefore, we are compelled to dismiss this claim as moot.

AWARD

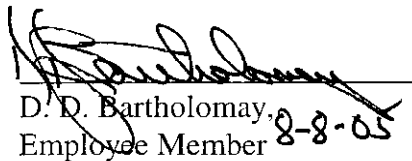
Claim dismissed.



Martin H. Malin, Chairman


D. A. Ring,
Carrier Member

8-8-05


D. D. Bartholomay,
Employee Member

8-8-05

Dated at Chicago, Illinois, July 29, 2005