

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 70
)
) Award No. 51
)

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

Hearing Date: January 25, 2006

STATEMENT OF CLAIM:

1. The dismissal of Trackman R. L. Wilkins for his alleged insubordination and threatening manner on August 1, 2004, was without just and sufficient cause, based on unproven charges and in violation of the Agreement (System File T04-31/1414970).
2. As a consequence of the violation referred to in Part (1) above, Trackman R. L. Wilkins shall now be allowed the remedy prescribed in Rule 21(f).

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.

The instant claim concerns Claimant's dismissal on charges arising out of the same incidents that gave rise to other charges on which the Board has ruled in Case No. 72, Award No. 50. In Award No. 50, we denied Claimant's claim and upheld his dismissal on charges of insubordination and refusal of an alcohol test. Accordingly, regardless of how we might resolve the instant claim, Claimant would be entitled to no relief in light of our Award No. 50. Therefore, the instant claim must be dismissed as moot.

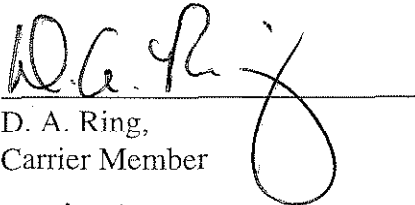
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AWARD

Claim dismissed.

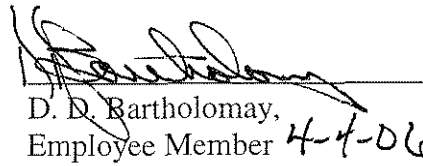


Martin H. Malin, Chairman



D. A. Ring,
Carrier Member

4-4-06



D. D. Bartholomay,
Employee Member 4-4-06

Dated at Chicago, Illinois, March 30, 2006