

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 74
)
) Award No. 54
)

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 Track Foreman Sampson Wilson for his alleged violation of several safety rules in connection with a collision between a Brandt truck and locomotive on November 3, 2004, was without just and sufficient cause, based on unproven charges and excessive and undue punishment (System File MW-05-29/1416742).
2. Track Foreman Sampson Wilson shall now be returned to service with seniority and all other rights unimpaired all time lost to be accredited Railroad Retirement, Hospitalization and vacation and any and all expenses acquired while attending the investigation located at the Holiday Inn Express, 24888, I 45 North, Spring, Texas 77386 with regard to meals and mileage at the rate of \$.37.5 a mile from the Claimant's place of residence at Mumford, Texas to the location of the investigation at Spring Texas 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 9, 2004, Carrier notified Claimant to appear for an investigation on November 30, 2004. The notice alleged that Claimant violated Rules 1.6(1), 1.1 and 1.1.2 and Chief Engineers Bulletin Instructions 136.4.2, 136.4, 136.3.1 and 126.8.2, by failing to provide on-track safety for his gang resulting in a collision between a Brandt Truck and a WAT Co. Switcher engine. The hearing was held as scheduled. On December 13, 2004, Claimant was

notified that he had been found guilty of the charge and dismissed from service.

The Organization has raised a number of alleged procedural deficiencies in the investigation. We have reviewed the record thoroughly. We find that none of the Organization's procedural objections individually or taken together provide a basis for setting aside the discipline. Accordingly, we turn to the merits of the charges.

The record reflects that on November 3, 2004, Claimant was working as the foreman and employee in charge. He cleared Brandt Truck 82959 off the main line and into Brimstone Yard. He failed to communicate with the switch engine. Instead, he relied on a conversation he had had with the contractor and assumed that he did not have to worry about the switch engine. The switch engine struck the Brandt Truck, injuring the driver of the Brandt Truck. Claimant acknowledged that he should have communicated with the switch engine and that he did not do all that he should have done to protect the members of the gang. Carrier proved the charges by substantial evidence.

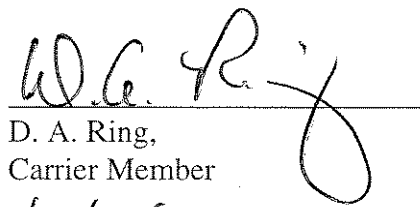
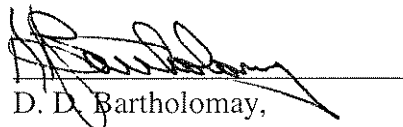
Carrier proved that Claimant committed serious safety violations. However, Claimant had 33 years of service and there is no evidence of any prior discipline. Considering all of the peculiar circumstances of this case, we find that the penalty of dismissal was excessive. Claimant shall be returned to service with seniority unimpaired but without compensation for time out of service. The Organization's claim that Claimant be compensated for costs incurred to attend the investigation is denied as unsupported by the Agreement.

AWARD

Claim sustained in accordance with the Findings.

ORDER

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto


Martin H. Malin, Chairman
D. A. Ring,
Carrier Member
4-4-06
D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, March 30, 2006