

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DIVISION - IBT RAIL CONFERENCE**

and

UNION PACIFIC RAILROAD COMPANY

)
)
) Case No. 91
)
) Award No. 68
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
B. W. Hanquist, Carrier Member

Hearing Date: March 20, 2007

STATEMENT OF CLAIM:

1. The Level 5 UPGRADE discipline assessment (dismissal from service) to Mr. G. D. Baldobino for an alleged violation of Union Pacific Rule 1.6 (Insubordinate and Quarrelsome) and Rule 1.13 (Reporting and Complying with Instructions) in connection with a situation between himself and his supervisor on February 5, 2006, was based on unproven charges and in violation of the Agreement.
2. As a consequence of the violation referred to in Part (1) above, Claimant is to be reinstated with all vacation rights, seniority rights, all pay for lost time starting on February 5, 2006, on a continuing basis, and days to be used as qualifying days for vacation purposes and all other rights due him under the collective bargaining agreement.

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 February 21, 2006, Carrier instructed Claimant to report on February 28, 2006, for a formal investigation concerning charges that on February 5, 2006, he was quarrelsome toward a

mechanic and insubordinate toward his supervisor, in violation of Rules 1.6 and 1.13. The hearing was held as scheduled. On March 14, 2006, Carrier informed Claimant that he had been found guilty of the charges and dismissed from service.

The Organization contends that the Hearing Officer was biased against Claimant and conducted the hearing in other than a fair and impartial manner. We have reviewed the transcript of the hearing carefully. We find no evidence of bias or partiality. We conclude that Claimant received a fair and impartial hearing in accordance with the Agreement.

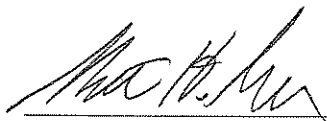
Claimant's testimony and the testimony of the mechanic are in general agreement. Both testified that on February 6, 2006, Claimant approached the mechanic, told the mechanic never to tell him what to do again (in apparent reference to the mechanic's relaying to Claimant instructions from their supervisor on February 3, 2006) and told the mechanic that the mechanic was not his boss. The mechanic testified that when Claimant made these statements, Claimant was pointing his finger at the mechanic, called the mechanic a "suck ass" and spoke in an intimidating tone of voice. Claimant denied these latter aspects of the confrontation. As an appellate body that does not observe the witnesses testify, we defer to the evaluation of witness credibility made on the property. We see no reason to deny such deference to the decision made on the property to credit the mechanic's testimony over Claimant's. We conclude that Carrier proved Claimant's quarrelsome behavior by substantial evidence.

The mechanic reported the incident to his and Claimant's supervisor. The supervisor testified that when he arrived at the work site and sought to speak with Claimant, Claimant responded, "I don't want to talk to you. We have nothing to discuss," and walked away. Claimant disputed the supervisor's testimony in this regard but, as explained above, we defer to the credibility evaluations made on the property. Accepting the decision on the property to credit the supervisor's testimony over Claimant's, we find that Carrier proved the charge of insubordination by substantial evidence.

At the time of the incident, Claimant had approximately 18 months of service. The incident itself is very serious and under Carrier's UPGRADE policy warrants dismissal. Considering the seriousness of the offense, Claimant's short tenure and the absence of any mitigating factors, we find that the penalty of dismissal was not arbitrary, capricious or excessive. Accordingly, the claim must be denied.

AWARD

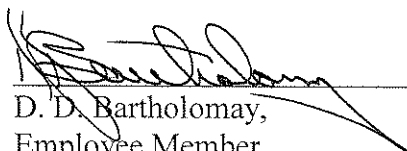
Claim denied.



Martin H. Malin, Chairman



B. W. Hanquist
Carrier Member



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, May 31, 2007