

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 85
UNION PACIFIC RAILROAD COMPANY) Award No. 73
_____)

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

Hearing Date: March 20, 2007

STATEMENT OF CLAIM:

The Level 2 Discipline assessed Mr. R. D. Roberts in a letter dated November 11, 2005 be dismissed in its entirety, and that Mr. Roberts' personal record reflect the same.

FINDINGS:

Public Law Board No. 6402 upon the whole record and all of 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 October 10, 2005, Claimant was notified to report for a formal investigation on October 23, 2005, concerning his allegedly abandoning his job assignment leaving a fellow employee in a dangerous situation and allegedly failing to hold a job briefing on September 28, 2005. The hearing was postponed to and held on October 26, 2005. On November 11, 2005, Claimant was advised that he had been found guilty of the charge and had been assessed discipline at UPGRADE Level 2, one day of paid alternative assignment to develop a corrective action plan.

The record reflects that on September 28, 2005, Claimant and a co-worker were changing the wear plates on a BUC undercutter, approximately 13 -15 feet off the ground. The plates weighed 100 - 150 pounds. It was raining and there was lightning in the sky.

The coworker testified that when the lightning started, Claimant came down off the

machine. The coworker asked Claimant where he was going and Claimant stated it was lightning and he was going to the boxcar. The coworker testified that Claimant left him holding the plate up alone, forcing him to set the plate down himself, which created an unsafe condition.

Claimant testified that when the lightning began, he advised the coworker that they needed to secure the materials and get down off the machine until the storm passed. According to Claimant, they did secure the plate prior to descending from the machine.

As an appellate body that does not observe the witnesses testify, we are in a comparatively poor position to evaluate relative credibility of the witnesses. Consequently, we defer to resolutions of conflicting testimony made on the property. In the instant case, we defer to the determination made on the property to credit the coworker's testimony over Claimant's.


The Organization argues that Claimant followed the safe course of action by choosing to get off the machine rather than work during a lightning storm. However, Claimant's decision to descend from the machine because of the lightning is not at issue. What is at issue is Claimant's not briefing the coworker on his plan of action and leaving the coworker alone to secure the plate. Based on the coworker's testimony, we find that Carrier proved the charge by substantial evidence.

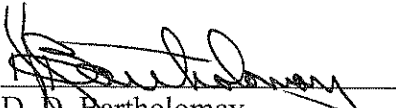
AWARD

Claim denied.



Martin H. Malin, Chairman


B. W. Hanquist
Carrier Member 7/17/07


D. D. Bartholomay
Employee Member 7-17-07

Dated at Chicago, Illinois, July 12, 2007