

PUBLIC LAW BOARD NO. 6621

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

UNION PACIFIC RAILROAD COMPANY

Case No. 17

Statement of Claim: Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Claimant J. W. Carswell for allegedly being absent from service without proper authority starting October 3, 2001 and continuing through October 25, 2001, was without just and sufficient cause and in violation of the Agreement.
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with seniority and all other rights unimpaired, compensated for net wage and benefit loss suffered by him since his dismissal, and the alleged charges be expunged from his personal record.

Background

Claimant J. W. Carswell entered the service of the Union Pacific Railroad Company on June 22, 1976. He held seniority in various classes within the Track Sub-department, and at the time in dispute was assigned as a Speed Swing Operator on System Gang 8539, headquartered on-line at Portland, Oregon.

By letter dated October 25, 2001, Claimant was removed from service for violating Rule 48(k), which states:

Employees absenting themselves from their assignments for five (5) consecutive working days without proper authority shall be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained.

Thereafter, a conference was held on November 15, 2001 during which Claimant asserted that he had requested vacation time by leaving a message on his supervisor's cell phone and that he had followed this practice without problems when working on other system gangs. Following the conference, the Carrier offered Claimant a leniency reinstatement. The reinstatement required that Claimant's record reflect the dismissal for excessive absenteeism without proper authority and his return to service on probation for a twelve-month period. It further specified that if Claimant violated any of the Carrier's rules during the probationary period, he would be removed from service without a formal hearing and returned to a dismissed status.

Claimant returned to service on November 19, 2001. Within one month of his return, however, Claimant was absent without authority on December 17, 18, and 19, 2001. The Carrier notified Claimant that he had violated his leniency reinstatement and returned him to a dismissed status.

A second conference was held on January 15, 2002. During that conference, Claimant stated that the mother of the woman with whom he lived had become terminally ill and within a week of being diagnosed with cancer, she died. Claimant's domestic partner was very upset and he, too, was distraught because he was close to her mother. Therefore, he felt he had to be at home during this period.

The Carrier concluded that Claimant's absence was without proper authority and that it violated the terms of his leniency reinstatement. Therefore, Claimant was dismissed from service.

Contentions of the Parties

The Carrier contends that it is undisputed that Claimant was absent without authority between October 3 and October 25, 2001 and that he accepted dismissal as part of his leniency reinstatement when he signed the agreement on November 16, 2001. Claimant understood that if he violated his probationary period, he would be returned to a dismissed status. Nevertheless, he absented himself for three days in December 2001. The Carrier argues that it had the right to insist that Claimant abide by the terms of his leniency reinstatement, which were clear and specific. Claimant's alleged personal problems did not give him license to absent himself from work without permission.

Essentially, the Organization's case is a plea for mercy. It acknowledges that Claimant "made a mistake that affected his co-workers and supervisors," but it asserts that Claimant was "not in the frame of mind to think very clearly," given the crisis that his domestic partner was facing. The Organization further contends that at the conference, Claimant testified honestly and was remorseful for his absence. He knew he had violated his leniency reinstatement, and, given his admission of error, the Organization submits that Claimant is entitled to leniency.

Opinion

It is undisputed that Claimant violated Rule 48(k) in October 2001. He was returned to service pursuant to a leniency agreement which expressly stated that (1) Claimant accepted dismissal for excessive absenteeism without proper authority; (2) Claimant would be required to complete a 12-month probationary period; and (3) in the event Claimant violated the Carrier's rules during probation, he would be removed from service

without investigation and placed back on dismissed status.

There is no doubt that Claimant understood the terms of his leniency reinstatement. There is also no claim by the Organization that he was unaware of the proper procedures to follow if he had to be off work. Nevertheless, within one month of his return, Claimant absented himself for three days without authority.

Management convened an informal conference and permitted Claimant to explain his behavior. While he described the illness and death of his partner's mother, he provided only a piece of a torn newspaper, identifying a name and no dates of a deceased person. But even assuming, *arguendo*, that Claimant's story was truthful, he did not show that he had authority to be off of work or that he even tried to obtain such authority from supervision, as specifically instructed during his leniency reinstatement process.

The Organization acknowledges that Claimant admitted to his supervisor that "he knew he had committed a second offense." Moreover, his subsequent expressions of remorse ring hollow in light of his clear and overriding responsibility to adhere to the terms of his leniency reinstatement. Claimant understood he was on probation, and he nevertheless ignored the guidelines to which he and his Organization had agreed.

Furthermore, Claimant had a documented history of failing to report to work. Just two years earlier, he acknowledged and accepted discipline for being absent without authorization on March 8 and 9, 1999.

Given Claimant's clear violation of his leniency reinstatement and his prior record, the Carrier was well within its rights in returning Claimant to a dismissed status. Were this Board to grant the claim, it would discourage the Carrier from ever agreeing to

leniency reinstatements and undermine the ability of the parties to negotiate special agreements when circumstances warrant leniency. Here, the leniency agreement was unequivocal, and Claimant simply chose to ignore it by placing his personal wishes above the legitimate business concerns of his employer.

Award

The claim is denied.



JOAN PARKER, Neutral Member



CARRIER MEMBER

DATED 7-16-03



ORGANIZATION MEMBER

DATED 7-16-03