

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7258

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	)	
	)	Case No. 8
and	)	
	)	Award No. 8
UNION PACIFIC RAILROAD COMPANY	)	

Richard K. Hanft, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: November 12, 2008

STATEMENT OF CLAIM:

1. The dismissal of Track Laborer Stanley J. Yazzie for violation of Rule 48 (k) in connection with being absent from his assignment for five (5) consecutive workdays from May 17 through May 22, 2007 is unjust, unwarranted, based on unproven charges and in violation of the Agreement. (Carrier's File 1485318 SPW).
2. As a consequence of the violations referred to in Part 1 above, Mr. Yazzie be immediately reinstated to the service of the Carrier, to his former position with seniority and all other rights restored unimpaired and the letter of dismissal also be expunged from his personal record. In addition, Claimant Yazzie shall also be compensated for net wage loss, both straight time and overtime and benefit loss suffered by him since his dismissal."

FINDINGS:

Public Law Board No. 7258 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.

Claimant was advised by letter dated June 7, 2007 that due to of his absenteeism May 17 through May 22 without proper authority and pursuant to Agreement rule 48 (k), he was being considered as having voluntarily forfeited his seniority rights and employment relationship. A conference in that regard was requested by the General Chairman by letter dated June 13, 2007 and a conference was held via telephone on July 2, 2007. Pursuant to the conference, the decision was made that there was not a justifiable reason for the Claimant to have not secured proper authority. The Organization filed a claim on Claimant's behalf on August 24, 2007.

Carrier denied the claim on October 16, 2007.. The Organization filed an appeal on November 27, 2008. Conference was held on November 4, 2003 with no resolution.

The Organization asserts that the facts of this dispute do not support the Carrier's decision to dismiss the Claimant. The Organization points out that in the instant matter the Claimant had 23 years satisfactory service and argues that Claimant was unjustly dismissed from service without ever being given any consideration to return to work because of the disease called alcoholism. The Organization avers that when any Carrier employee suffers from alcoholism, that employee is given the opportunity to accept treatment through an Employee Assistance Counselor or a twelve-step program.

The Organization maintains that Claimant here admitted to missing work and also to having a drinking problem. Moreover, the Organization contends, since his dismissal he has successfully graduated from an alcohol rehabilitation program. Thus, the Organization submits, when consideration is given to the fact that the Claimant recognized his illness, sought help and successfully completed an alcohol rehabilitation program that the Carrier's decision to dismiss the Claimant cannot be validly upheld.

The Carrier avers that there are two questions that are significant to the resolution of this dispute: Did the Claimant have "*proper authority*" to absent himself from service; and, has the Petitioner substantiated his burden of proof in making a showing that the Claimant had secured the proper authority to be off work? To each question, Carrier asserts, the answer is no. Consequently, the Carrier argues, there is no basis for the Board to sustain the claim and it should be denied in its entirety

The record reveals that Claimant failed to report for duty from May 17 through May 22, 2007 without obtaining proper authority to be absent.. It is the Organization's assertion that this absence was the direct result of Claimant suffering from alcoholism. Moreover, the Organization maintains, since that time Claimant has recognized his illness, sought help and successfully completed an alcohol rehabilitation program. Carrier dismissed Claimant pursuant to Rule 48 (k) which provides in relevant part:

"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..."

The Board finds that in prior awards alcoholism has been found to be a 'correctable condition' and that here, steps have been voluntarily taken by Claimant to correct his problem. Moreover, while the Claimant's record of long time satisfactory service as well as the lack of any record evidence of any prior rules violations does not excuse the Claimant's absence without proper authority, it does mitigate it. Thus, under the circumstances, we find that it is appropriate to temper the harshness of the strict and automatic application of Rule 48 (k) and award that Claimant be reinstated to service with seniority unimpaired but without compensation for time

out of service. Perusal of cited prior awards confirms that reinstatement on a last chance basis may be a proper remedy where there is evidence of rehabilitation. Since there is evidence of Claimant's acknowledgment that there was a problem and since positive steps have been taken toward controlling the problem, we are hopeful that if given one last and final chance with sufficient safeguards to ensure that Carrier's concerns are addressed, that Claimant will prove to be an acceptable employee. Accordingly, we will direct that Claimant be reinstated to service without compensation for lost time subject to the following conditions:

1.) Within two weeks of being notified of his reinstatement, Claimant shall contact the Carrier's Employee Assistance Program and comply with all requirements imposed by the EAP and further, comply with any reasonable request by Carrier to document his compliance; and,

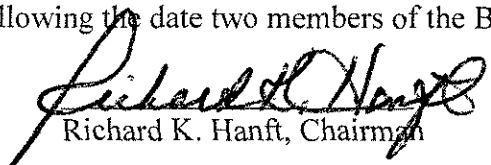
2.) Claimant shall agree to a "Last Chance Agreement" negotiated between himself, the Carrier and the Organization.

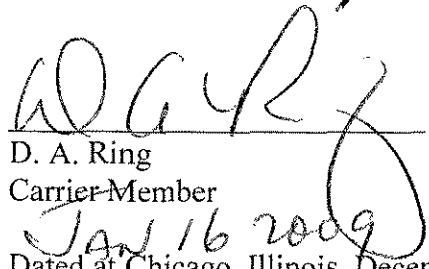
AWARD

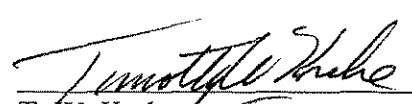
Claim sustained in accordance with the findings.

ORDER

The Board, having determined that an award favorable to the Claimant hereby orders the Carrier to return Claimant to service with seniority unimpaired, but without back pay effective within thirty (30) days following the date two members of the Board affix their signatures hereto.


Richard K. Hanft, Chairman


D. A. Ring
Carrier Member


T. W. Kreke
Employee Member

Jan 16 2009
Dated at Chicago, Illinois, December 12, 2008