NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES   )
) Case No. 50
and   )
) Award No.45
UNION PACIFIC RAILROAD COMPANY   )

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: March 22, 2004

STATEMENT OF CLAIM:

1.   The dismissal of Track Inspector Hal Chatwin for his alleged falsification of an accident report and tampering with evidence in connection with an incident that occurred on August 5, 2000 was without just and sufficient cause, in violation of the Agreement and based on unproven charges (System File J-0348-70/1376063 D).

2.   As a consequence of the violation referred to in Part (1) above, Track Inspector Hal Chatwin shall be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

Public Law Board No. 6302, 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 July 17, 2003, Carrier notified Claimant to appear for an investigation on July 28, 2003, concerning his alleged falsification of an accident report and alleged tampering with evidence concerning an accident which occurred on August 5, 2000. The hearing was postponed to and held on August 4, 2003. On August 21, 2003, Claimant was notified that he had been found guilty of the charges and dismissed from service.

The record reflects that Claimant was injured when the hirail truck in which he was riding overturned due to a flat tire on August 5, 2000. On August 6, 2000, Claimant and a coworker returned to the scene of the accident so that Claimant could retrieve some personal items left in the truck. On August 7, 2000, Claimant completed his accident report, in which he indicated that

the accident resulted from a loose valve stem which caused a tire to go flat.

Evidence of the alleged falsification arose in the deposition of the co-worker taken in connection with Claimant's FELA lawsuit. The coworker testified in his deposition and again at the investigation that on August 6, 2000, Claimant told him that he might not want to watch what Claimant was about to do. Thereafter, according to the coworker, he observed Claimant use a tool to loosen the valve stem. Claimant denied loosening the valve stem but testified that he might have made the statement as testified by the coworker. The Manager of Track Projects testified that on the day of the accident, he investigated the accident scene. He testified that he could not recall if he checked the valve stem. When shown his deposition where he testified to having observed that the valve stem was loose, the Manager Track Projects testified that he did check the valve stem and it was loose.

The record thus presented considerable conflicting testimony. As an appellate body we are in a poor position to resolve such conflicts, and generally defer to the resolution made on the property. We see no reason not to defer in the instant case. Accordingly, we hold that Carrier proved the charges by substantial evidence.
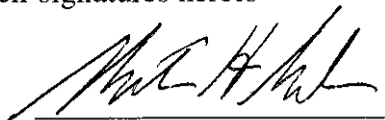
However, we observe that Claimant had twenty-two years of service and the record contains no evidence of any prior discipline. Under these circumstances, we find that the penalty of dismissal was excessive. Claimant shall be reinstated to service with seniority unimpaired but without compensation for time held out of service.
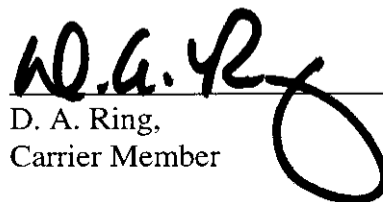
AWARD

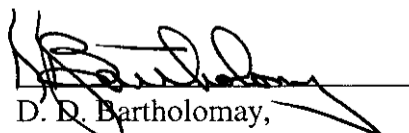Claim sustained in accordance with the Findings.

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

D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, May 22, 2004

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