

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

)
) Case No. 7
)
) Award No. 9
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. M. Gevaudan, Carrier Member

Hearing Date: April 20, 2000

STATEMENT OF CLAIM:

1. The dismissal of Welder F. A. Otto for his alleged violation of Maintenance of Way Rules 1.14, 1.15 and Operating Rule 1.9, in connection with a guilty plea and conviction on the charge of battery, a Class D Felony, in the Superior Court of Lake County Indianan on December 29, 1998, was without just and sufficient cause (System File SAC-5-99/UM-4-99).
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be returned to his welder position immediately

FINDINGS:

Public Law Board No. 5905, 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.

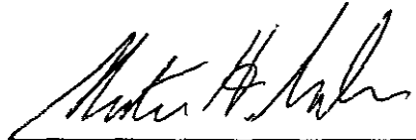
On January 8, 1999, Carrier notified Claimant to report for an investigation on January 18, 1999, concerning "the charge of violation of M of W Rules 1.14, 1.15 and Operating Rule 1.9, on December 29, 1998, in the Superior Court of Lake County, Indiana, Criminal Division, you entered a plea of guilty to the charge of Battery, a Class D Felony, and were convicted of this crime." The hearing was held as scheduled. On January 27, 1999, Carrier advised Claimant that he had been found guilty of the charges and had been dismissed from service.

In Case No. 9, Award No. 8, we upheld Carrier's assessment of sixty demerits against

Claimant for absenteeism resulting from his incarceration. The sixty demerits, combined with Claimant's prior record of sixty demerits resulted in Claimant's dismissal from service. Accordingly, with the dismissal upheld in Case No. 9, Award No. 8, there is no relief that we could award Claimant even if we were to sustain the instant claim. Therefore, the instant claim must be dismissed as moot.

AWARD

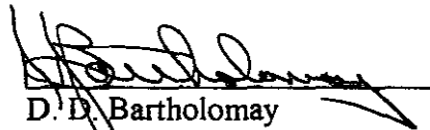
Claim dismissed.



Martin H. Malin, Chairman



D. M. Gevaudan
Carrier Member



D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, May 8, 2000.