

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6089

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 19
)
) Award No. 12
)

Martin H. Malin, Chairman & Neutral Member
R. B. Wehrli, Employee Member
D. A. Ring, Carrier Member

Hearing Date: August 26, 1999

STATEMENT OF CLAIM:

1. The dismissal of Sectionman M. J. Haas was in violation of the Agreement, based on unproven charges and an abuse of discretion.
2. Claimant Haas must be reinstated to his previous assignment with his seniority and all other rights restored unimpaired; he must be compensated for all wage losses incurred since his unjust dismissal; and all charges and reference to this incident must be expunged from his personal record. (System File KS Disp.W-9848-155-1136713D).

FINDINGS:

Public Law Board No. 6089, 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 26, 1998, Carrier notified Claimant that he was dismissed from service under Rule 48(l) of the Agreement for voluntarily leaving the work site without proper authority. The Organization requested a hearing which was scheduled for and conducted on February 24, 1998. The notice of hearing charged Claimant with violating Rules 1.15 and 1.16. On March 12, 1998,

Carrier advised Claimant that he had been found guilty of the charges and dismissed from service.

The Organization contends that Carrier violated Rule 48(a) of the Agreement by dismissing Claimant without first holding a hearing. The Organization maintains that Rule 48(l) did not apply. The Organization further contends that Claimant relied on advice from the NPS Specialist that he could be bumped by another employee, told the foreman that he was taking the bump and taking the day as vacation and the Foreman acquiesced in this action.

Carrier contends that the Supervisor communicated through the Foreman that Claimant could not be bumped. Furthermore, neither the Supervisor nor the Foreman authorized Claimant to take a vacation day on January 26. Consequently, Claimant left the job site without proper authority and Carrier acted properly under Rule 48(l).

In this case, the basis for Claimant's dismissal, his allegedly having left the job site without authority, is also the basis for Carrier's failure to hold a hearing prior to imposing discipline. The record reveals that the following occurred.

Claimant was assigned as a Sectionman on Gang 4807. On Friday, January 23, 1998, the Gang was advised that another employee would be displacing the Truck Operator on the Gang on Monday, January 26. The displaced Truck Operator wanted to remain with the Gang and advised that he intended to displace a Sectionman who was junior to him and junior to the Claimant. Claimant wanted to move to a gang closer to his home. Claimant was aware that there was a Sectionman in the gang closer to his home who was junior to Claimant. Claimant, therefore, asked if he could be displaced by the Truck Operator so that he could displace the junior Sectionman in the gang closer to Claimant's home. The Supervisor advised the Foreman that Claimant could not take the bump and the Foreman so advised Claimant.

On Monday morning, Claimant called the Non-Ops Personnel Services Specialist who monitors displacements and asked, "If somebody bumps into a gang and the older guy wants to take the bump can he take it?"

The NPS Specialist replied, "Sure." Thereafter, Claimant put the Truck Operator on the phone. The Truck Operator began to explain that he was going to bump the junior Sectionman when the NPS Specialist interjected, "And [Claimant's] question was whether or not somebody with more seniority could take the bump if they wanted to be bumped. And yes, they can."

The Truck Operator advised that NPS Specialist that they should "get this per the powers that be." The NPS Specialist advised the Truck Operator to have the Supervisor contact him. The Truck Operator then returned the phone to Claimant.

Claimant advised the NPS Specialist that he had tried unsuccessfully to reach the Organization's General Chairman over the weekend. The NPS Specialist advised Claimant to try calling the General Chairman at that point. Claimant replied that he was not allowed to do so because he was on company time, but added, "So if I get bumped I can call him. The NPS

Specialist replied, "Oh. Take a day off of vacation." Claimant responded, "Okay. Put me as bumped."

It is apparent that Claimant and the Truck Operator believed they were asking whether the Truck Operator could bump Claimant even though he was junior to Claimant. It also is apparent that the NPS Specialist understood the question to be whether the Truck Operator could bump Claimant even though the other Sectionman was junior to Claimant. Under the Rules, the Truck Operator could have displaced any Sectionman who was junior to him; he was not limited to displacing the most junior Sectionman. However, he could not displace someone, such as Claimant, who was senior to him.

Claimant then advised the Foreman that the NPS Specialist had told him he could take the bump and that he was going to displace into another gang. As testified by the Foreman, Claimant "asked me to put him down for vacation and turned and walked out of the depot."

The Organization paints the events of January 26, 1998, as the result of miscommunication between Claimant and the NPS Specialist. We agree that there was miscommunication between Claimant and the NPS Specialist, but that miscommunication was beside the point. The basis for Carrier's invocation of Rule 48(l) and for its dismissal of Claimant was Claimant's having left without authority.

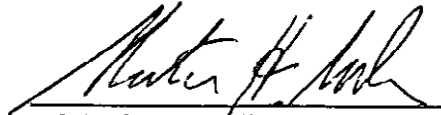
Claimant had been advised by the Supervisor, communicating through the Foreman, that he could not take the bump. Furthermore, the NPS Specialist himself indicated that he would speak with the Supervisor about this matter. However, after speaking with the MPS Specialist, Claimant told the Foreman that he was taking the bump and that he was taking a vacation day and walked out. Even if Claimant had a good faith belief that he was entitled to take the bump, such a belief could not justify his precipitous conduct.

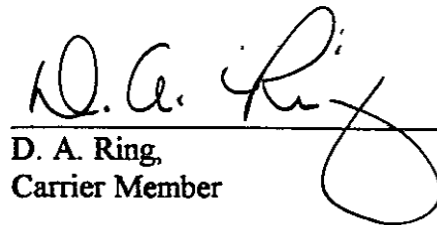
The Organization's argument that the Foreman acquiesced in Claimant taking vacation on January 26 is not supported by the record. Claimant simply announced his intentions and left. He did not give the Foreman a reasonable time to react. Furthermore, Claimant could not reasonably have believed that the NPS Specialist could authorize him to take vacation.

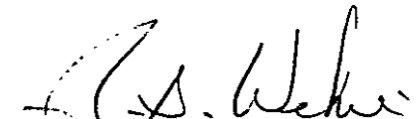
Thus, it is apparent that Claimant left without authority. Carrier acted properly under Rule 48(l) when it did not hold a hearing prior to imposing discipline. In the post-discipline hearing, Carrier proved the charges by substantial evidence.

AWARD

Claim denied.


Martin H. Malin, Chairman


D. A. Ring,
Carrier Member


R. B. Wehrli
Employee Member

Dated at Chicago, Illinois, January 10, 2000.