

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6089

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 15
)
) Award No. 13
)

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 System Gang employee H. T. Eoff was in violation of the Agreement, based on unproven charges and an abuse of discretion.
2. Claimant Eoff 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.

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 December 2, 1997, Carrier notified Claimant to report for an investigation on December 11, 1997, in connection with his allegedly being discourteous toward the Track Supervisor on November 13, 1997, when requested to give information concerning a personal injury that he had sustained. The hearing was held as scheduled. On January 5, 1998, Carrier informed Claimant that he had been found guilty of the charge and was dismissed from service.

The Organization raises a number of procedural arguments. We have reviewed the

transcript of the hearing carefully and find that Claimant was afforded a fair and impartial investigation. None of the procedural errors alleged by the Organization provide grounds for overturning the discipline.

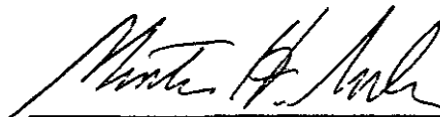
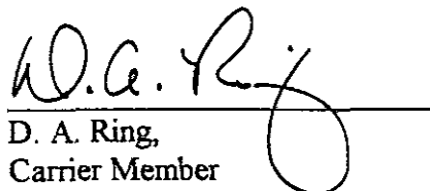
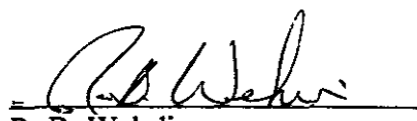
Our review of the record also discloses that there was substantial evidence that Claimant used abusive and profane language in response to the Track Supervisor's request that he reenact the events that led to his on-duty injury. However, considering all of the circumstances of this matter, the Board finds that the penalty of dismissal is excessive and that Claimant should have one last chance to show that he is a productive and cooperative employee. Accordingly, we shall order that Claimant be reinstated to service with seniority and benefits 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
R. B. Wehrli
Employee Member

Dated at Chicago, Illinois, January 31, 2000.