

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6089

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

)

) Case No. 12

and

)

) Award No. 16

UNION PACIFIC RAILROAD COMPANY

)

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 Track Gang employee F. Guajardo for allegedly being absent from his assignment without proper authority on September 4, 5, 6, 9, and 10, 1996, was arbitrary, capricious, without just and sufficient cause and in violation of the Agreement (System File D-266/1052379).
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

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.

Claimant was dismissed from service pursuant to Rule 48(k), which provides:

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 Organization requested a conference on Claimant's behalf, pursuant to Rule 48(n) which provides:

An employee in service who feels he has been unjustly treated may request a conference through the General Chairman or other officer of the organization. If the matter cannot be resolved in the interim, the representative may make written request for a conference to the appropriate Carrier manager involved and such request shall contain the precise nature or cause of the complaint. Such request for conference must, however, be made within twenty (20) calendar days of the cause of the complaint. If the asserted unjust treatment is left unresolved, it may be handled as a claim or grievance under the provisions of Rule 49.

The record reveals that Claimant was absent from September 4, 1996, through September 12, 1996. On September 4, he made no effort to contact his supervisor. On September 5, he left a message on his supervisor's pager indicating that he was unable to work and that he would provide documentation upon his return to service. At the conference held pursuant to Rule 48(n), the supervisor indicated that he received the page, attempted to return the call but that the telephone number that Claimant had left was incorrect. On September 6, Claimant was admitted to a hospital for detoxification necessitated by his abuse of several controlled substances.

The Organization contends that Carrier violated Rule 48(a) by dismissing Claimant without first affording him a hearing. Rule 48(k), however, is self-executing. If Carrier applied Rule 48(k) properly, no hearing was required.

The Organization contends that Claimant had obtained authority from his supervisor in the past by leaving a message on the supervisor's pager. However, in the instant case, Claimant precluded the supervisor from returning the phone call by not leaving the correct telephone number. Merely leaving a message on the supervisor's pager does not automatically constitute authority to be absent. Claimant was absent without authority and Rule 48(k) applied to him.

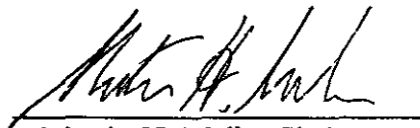
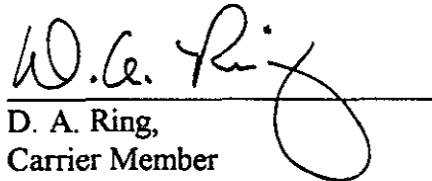
The Organization argues that Claimant showed a justifiable reason for not obtaining proper authority for his absences. Specifically, the Organization maintains, Claimant's hospitalization prevented him from obtaining authority. The Board does not agree. First, Claimant had two days prior to his hospitalization in which to contact his supervisor and obtain authority. The first day, he made no effort to do so. The second day he left a message but precluded his supervisor from calling back and advising him whether he would be given authority by leaving an incorrect telephone number.

Second, Claimant's hospitalization was not the first time that his substance abuse affected his employment. On June 20, 1992, he was medically disqualified from service because he tested positive for an illegal substance during a routine medical examination. He returned to service on August 13, 1992. However, on August 6, 1993, he again tested positive and was discharged. He accepted a waiver of dismissal agreement, under which he participated in the Employee

Assistance Program. He was returned to service following an October 26, 1993, recommendation by his EAP counselor. Under these circumstances, we cannot say that Claimant's relapse into substance abuse or the consequences thereof furnished justification for his failure to obtain authority for his absences.

AWARD

Claim denied.


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

Dated at Chicago, Illinois, February 14, 2000.