

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6089

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

)

) Case No. 22

)

and

)

) Award No. 22

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 Claimant F. Sanchez was in violation of the Agreement, based on unproven charges and an abuse of discretion.
2. The Carrier's failure to reinstate Claimant Sanchez to service is in violation of the Agreement as well as the practices and understandings connected thereto.
3. As a result of 1. and 2. above, Claimant Sanchez must be compensated for all wage losses incurred during his wrongful and invalid dismissal from service; and all charges and references to this incident must be expunged from his personal record. (System File R-9848-105)

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 November 26, 1997, Carrier notified Claimant to report for an investigation on December 12, 1997, concerning his allegedly having tested positive in a follow-up drug test on

November 18, 1997, and his alleged insubordinate failure to comply with instructions given in a letter from the Engineering Supervisor on August 9, 1997. On December 10, 1997, Carrier notified Claimant that it had postponed the hearing to January 6, 1998. The hearing was held on January 6, and on January 20, 1998, Carrier informed Claimant that he had been found guilty of the charge and was dismissed from service.

There appears to be no dispute that the Claimant tested positive for cocaine on November 18, 1997. The Organization raises several procedural arguments and challenges Carrier's failure to reinstate the Claimant pursuant to Carrier's drug and alcohol policy that was in effect at the time that Claimant first tested positive for cocaine. Only one of the Organization's procedural contentions warrants significant discussion.

Rule 48(a) provides, in relevant part: "Formal hearing, under this rule, shall be held within thirty (30) calendar days from date of the occurrence to be investigated or from the date the Company has knowledge of the occurrence to be investigated, except as provided hereinafter." Rule 48(b) provides: "Formal hearing may be postponed or time limits referred to herein extended by mutual agreement between management and the employee or his representative.

The Organization contends that Carrier violated Rule 48(a) because the hearing was postponed to January 6, 1997, without the Organization's agreement and that this date was beyond the thirty day time limit. The record reveals considerable confusion concerning the manner by which the hearing was postponed. The Manager Engineering Resources indicated that he discussed postponement with the Second Vice Chairman and that, as a result of that conversation, he "did not . . . feel that Carrier was denied its request to postpone this hearing until January 6, 1998 . . ." The Second Vice Chairman disagreed with the Manager Engineering Resources' characterization of the conversation and maintained that he would not agree to a postponement of the hearing unless the hearing location was changed. The Board admonishes the parties that they are encouraged to make reasonable efforts to arrive at mutually agreed postponements.

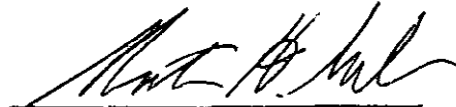
The Board has reviewed the record carefully. In light of all of the facts and circumstances, including specifically the confusion in the record regarding the postponement, the Board finds that the Claimant should be given an opportunity to demonstrate that he can be a productive and drug free employee. Accordingly, we shall order that Carrier reinstate the Claimant with seniority and benefits unimpaired, but without compensation for time held out of service. Claimant's reinstatement shall be conditioned upon his contacting Carrier's Employee Assistance Program (EAP) and upon the EAP clearing him to return for service. Reinstatement shall also be conditioned on Claimant's passing a return to work physical. Following reinstatement, Claimant shall be required to comply with all directions of the EAP and shall be subject to follow-up drug testing.

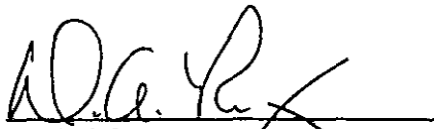
AWARD

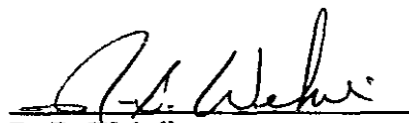
Claim sustained in accordance with the Findings.

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, February 26, 2000.