

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 132
UNION PACIFIC RAILROAD COMPANY) Award No. 133
_____)

Martin H. Malin, Chairman & Neutral Member
T. W. Krcke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: February 7, 2008

STATEMENT OF CLAIM:

- (1) The Agreement was violated when the Carrier denied Mr. E. Bindert the opportunity to work on June 27, 2005 and when it failed and refused to allow him the per diem allowance for four (4) days or the weekend travel allowance (Carriers's File 1430075).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant E. Binder shall now be compensated for ten (10) hours at his respective straight time rate of pay, the per diem allowance for four (4) days and the weekend travel allowance.

FINDINGS:

Public Law Board No. 6302 upon the whole record and all of 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.

At the time the claim arose, Claimant was assigned to New Construction Gang 8957, working a compressed work schedule of four ten hour days, Monday - Thursday, with Friday, Saturday and Sunday as rest days. At issue are the events of Monday, June 27, 2005. The parties present two very different versions of what occurred that day.

According to the Organization, prior to the end of the workday on Thursday, June 23, 2005, the gang was instructed to report on Monday, June 27 to Eastman Street Yard at 6:00 a.m. Claimant reported to Eastman Street Yard at 5:30 a.m. in shorts and tennis shoes intending to change into his work clothes. The gang was then advised that the assembly point had been

changed to the Oak Street meeting area. Claimant drove to the Oak Street meeting area but got lost and arrived at 7:00 a.m. Claimant was not allowed to work that day, giving rise to the instant claim.

Carrier maintained that Claimant erroneously reported to Eastman Street Yard and called the Foreman who advised him of the correct assembly point. Although the assembly point was only five minutes away from Claimant's location, he did not report until 7:00 a.m., one hour late, and even then was not dressed and prepared to go to work. Carrier urges that it properly exercised its right to not allow a tardy employee to work that day.

Resolution of this claim depends on whether Claimant's designated assembly area was Eastman Street Yard or Oak Street meeting area. If the former, then Claimant reported to the proper location with plenty of time to change into his work clothes. If the latter, then Claimant reported late and unprepared to work and Carrier acted properly in refusing to allow him to work.

The record contains a statement from Claimant's Supervisor which provided:

According to my notes the employee showed up about an hour late. Everyone else was there on time. He said he tried to follow other employees but got lost. The new location is only about five minutes. There is almost no traffic at this time. Once he did show he was not ready to work he was in shorts and tenni[s] shoes.

The Supervisor's statement refers to the "new location." It also refers to Claimant's statement that "he tried to follow other employees . . ." We infer from the Supervisor's statement that the employees' assembly point was Eastman Street Yard but that early in the morning of June 27, the gang was directed to proceed to the Oak Street meeting area. Otherwise, the reference to trying to follow the other employees to the new location would not make sense.

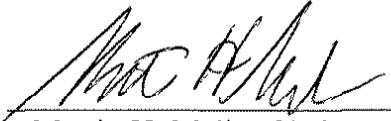
Thus, we find that Claimant did report on time to his designated assembly point. His taking over an hour to travel to the new location which was only five minutes away remains unexplained, but, although his delay in proceeding to the new location may have provided grounds to counsel or discipline him, it did not justify refusing to allow him to work that day. Accordingly, the claim must be sustained.

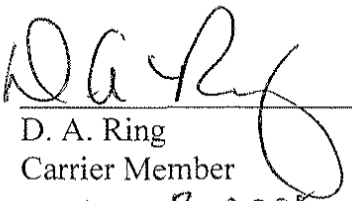
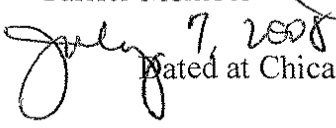
AWARD

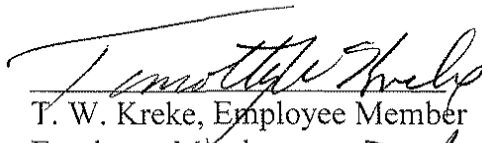
Claim sustained.

ORDER

The Board having determined that an award favorable to Claimant be issued, Carrier is ordered to implement the award within thirty days from the date two members affix their signatures hereto


Martin H. Malin, Chairman


D. A. Ring
Carrier Member
 July 7, 2008


T. W. Kreke, Employee Member
Employee Member
July 7, 2008

Dated at Chicago, Illinois, June 25, 2008