

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 146
UNION PACIFIC RAILROAD COMPANY) Award No. 141
_____)

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

Hearing Date: June 18, 2008

STATEMENT OF CLAIM:

- (1) The dismissal of Mr. F. D. Scott for violation of Rule 48(k) in connection with absenting himself from his assignment for five (5) consecutive working days without proper authority is unjust, unwarranted and in violation of the Agreement (System File J-0748U-258/1478629).
- (2) As a consequence of the violation outlined in Part (1) above, we request that Mr. Scott be immediately reinstated with all seniority and vacation rights restored and that he be compensated for all time unjustly withheld from service.

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.

On September 1, 2006, Carrier notified Claimant that he had been absent without authority from August 24, 2006 through August 31, 2006, and that his seniority had been forfeited in accordance with Rule 48(k) of the Agreement. Rule 48(k) provides, in relevant part:

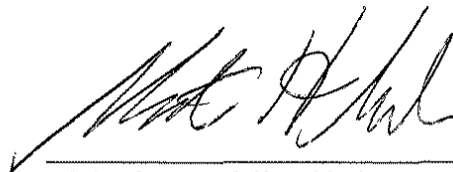
Employees absenting themselves from their assignment for five (5) consecutive working days without proper authority shall be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained.

The Organization contends that Claimant complied with Rule 48(k) because he was absent due to back problems and was under a doctor's care and because he called his supervisor repeatedly and left messages but the supervisor never returned his calls. The Organization has the burden of proof to establish good cause for Claimant's failure to obtain proper authority. The record contains no documentary evidence of Claimant's alleged medical disability. Furthermore, the record reflects that the Organization initially requested an unjust treatment hearing under Agreement Rule 48(n). Carrier did not respond until four months later, after another inquiry from the Vice Chairman. At that time, Carrier maintained that the request for a 48(n) hearing was improper because Claimant was not in service when the request was made, but Carrier invited the Organization to submit the reason Claimant did not obtain proper authority for his absence and supporting documentation. Although the parties agree that a submission was made in response to this offer, the submission and documentation is not in the record.

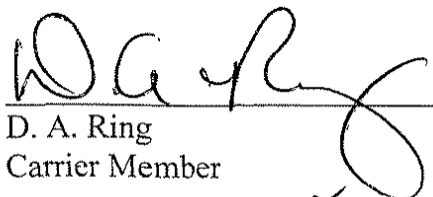
Carrier's handling of this matter cannot be condoned. Carrier inexplicably waited four months to respond to the Organization's initial request for a 48(n) hearing and then responded only after being prompted by a further inquiry from the Organization. Carrier again, without explanation, waited several months before responding to the Organization's submission of Claimant's purported justification for his failure to secure proper authority for his absences. Carrier's inexcusable delays, however, do not relieve the Organization of its burden of proof. On the record presented, we are compelled to hold that the Organization has not carried its burden of proof.

AWARD

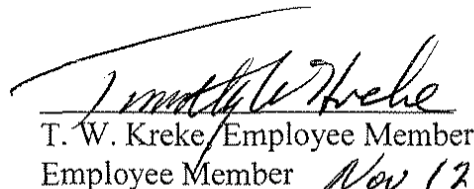
Claim denied.



Martin H. Malin, Chairman



D. A. Ring
Carrier Member



T. W. Kreke/Employee Member
Employee Member

Nov 12, 2008

11-12-08
Dated at Chicago, Illinois, October 30, 2008