

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 152
UNION PACIFIC RAILROAD COMPANY) Award No. 147
_____)

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 John M. Scott for violation of Rule 1.6 (Conduct) in connection with his alleged failure to accurately report his time on July 23, 2007 and July 26, 2007 is unjust, unwarranted and in violation of the Agreement (System File J-0748U-269/1489518).
- (2) As a consequence of the violation outlined in Part (1) above, we request the dropping of all charges against Mr. J. M. Scott, the removal of any mention of this incident from his personal record and compensation for all time that Mr. Scott was 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 August 9, 2007, Carrier notified Claimant to report for an investigation on August 17, 2007. The notice charged that Claimant paid himself for time not worked on July 23, 2007 and July 26, 2007 in violation of Rule 1.6. The hearing was held as scheduled. On September 4, 2007, Carrier notified Claimant that he had been found guilty of the charges and dismissed from service.

There is no dispute that Claimant paid himself for a full day on July 23, 2007, when he

did not work at all. Claimant paid himself for four hours on July 26, 2007. Claimant testified that he in fact worked four hours on July 26 and that his paying himself for July 23 was an honest mistake.

The Truck Driver, however, testified that Claimant called him on July 26 and said he would not be in to work at all that day. Furthermore, there is absolutely no evidence in the record corroborating Claimant's testimony that he worked for four hours on July 26. When asked what service he performed on July 26, Claimant testified that he sat in the depot for three hours and then drove the right-of-way in his car. The hearing officer observed the witnesses and did not credit Claimant's testimony that he had worked for four hours on July 26. We see no reason to disturb that finding.

Although Claimant testified that his submission of time for July 23 was an honest mistake, the Truck Driver testified that Claimant told him that in light of the Manager Track Maintenance being on vacation, if any members of the gang wanted to take time off, they should do so and he would pay them for it. Such a statement reflects a dishonest intent. We generally defer to credibility determinations made by the hearing officer who observes the witnesses testify and we see no reason to disturb the hearing officer's determination not to credit Claimant's testimony that he made an honest mistake. We conclude that Carrier proved the charge by substantial evidence.

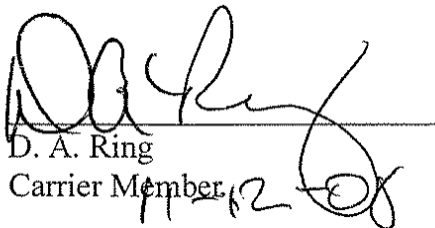
Dishonesty such as that established in the instant case breaks the bond of trust between Carrier and its employee. The Agreement does not require Carrier to keep a dishonest employee in its employ. The penalty imposed was not arbitrary, capricious or excessive.

AWARD

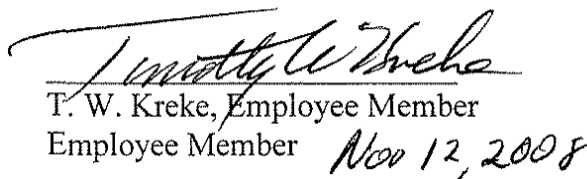
Claim denied.



Martin H. Malin, Chairman



D. A. Ring
Carrier Member



T. W. Kreke, Employee Member
Employee Member Nov 12, 2008

Dated at Chicago, Illinois, October 30, 2008