

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 162
UNION PACIFIC RAILROAD COMPANY) Award No. 156
_____)

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

Hearing Date: March 23, 2009

STATEMENT OF CLAIM:

1. The thirty (30) day suspension imposed upon Truck Driver Ronald A. Dale for violation of General Code of Operating Rule 42.3 in connection with fouling the mainline at Mile Post 21.5 on the Omaha Subdivision on October 18, 2007 is unjust, unwarranted and in violation of the Agreement (System File J-0848U-251/1496705).
2. As a consequence of Part 1 above, we request dropping of all charges against Mr. Ronald A. Dale, the removal of any mention of this incident from his personal record and compensation for all time that Mr. Dale was unjustly withheld from service.

FINDINGS:

Public Law Board No. 6402 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 October 26, 2007, Carrier notified Claimant to report for a formal investigation on November 1, 2007, concerning his allegedly fouling the main line at Milepost 21.5 while operating a boom truck loading rail onto a flatbed trailer on October 18, 2007, at approximately 1500 hours. The hearing was held as scheduled. On November 9, 2007, Carrier notified Claimant that he had been found guilty of the charge and assessed discipline at UPGRADE Level 4, a thirty-day suspension.

The Organization contends that Carrier violated Rule 48(a) because the notice of charge was insufficiently precise. We disagree. The notice clearly specified the date, time and location of the alleged violation and clearly specified the alleged wrongful act, i.e., fouling the main line while loading rail onto a flatbed trailer. We can think of no additional information that could have been provided. Claimant clearly had sufficient information to enable him to prepare his defense.

The record reflects that on the date in question, Claimant was operating the district boom truck. Claimant, the Semi Truck Driver, the Sectionman and the Welder were assigned to sort reusable rail from scrap at a pile of rail at M.P. 21.5. Claimant was using the boom to load rail onto the semi's flatbed and onto his own truck.

The Manager Track Maintenance testified that later that day, the Semi Driver contacted him and advised that Claimant had fouled Main Line Track 2. Two days later, the Sectionman contacted him and advised similarly. The MTM obtained statements from the Semi Driver, the Sectionman and the Welder. He then spoke with Claimant who advised that he might have fouled the main line. There is no dispute that the employees did not have a permit to foul the track.

The Welder testified that he observed Claimant and the Semi flatbed fouling Main Line 2. He advised the employees of his observation and they repositioned their vehicles. The Sectionman and the Semi Driver testified that even after the repositioning, they observed Claimant pick up rail and swing it around to place in the semi flatbed and in the process foul Main Line 2. Claimant denied ever fouling the track, although he did agree that at one point they repositioned the trucks.

Claimant's testimony and that of his coworkers also differed concerning the length of rail that he was loading and whether it was physically possible for him to foul the track. As an appellate body, we do not find facts de novo. Rather, we defer to the resolution of conflicts in the evidence made on the property as long as such resolution is reasonable. In the instant case, the decision made on the property to credit the testimony of Claimant's coworkers over that of Claimant was eminently reasonable. There was no evidence of any motive on the part of Claimant's coworkers to fabricate and a reasonable factfinder could conclude that it was not likely that they were mistaken. We conclude that Carrier proved the charge by substantial evidence.

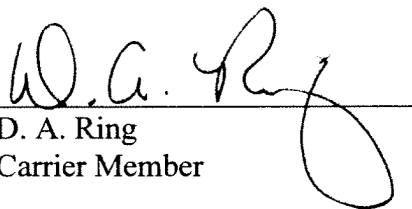
The penalty assessed was in keeping with Carrier's UPGRADE policy. We cannot say that it was arbitrary, capricious or excessive.

AWARD

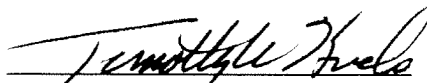
Claim denied.



Martin H. Malin, Chairman



D. A. Ring
Carrier Member



T. W. Kreke
Employee Member

June 23, 2009

Dated at Chicago, Illinois, June 23, 2009