

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 164
UNION PACIFIC RAILROAD COMPANY) Award No.158
_____)

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 dismissal of Welding Foreman Alan G. Thornhill for releasing his track and time permit while gang vehicles were still occupying the limits of the authority on November 6, 2007 is excessive, arbitrary and capricious (System File J-0848U-253/1496972).
- (2) As a consequence of Part 1 above, we request that all charges should be dropped and removed from Mr. Thornhill's personal record. In addition Mr. Thornhill must be returned to service and 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 November 19, 2007, Carrier notified Claimant to report for a formal investigation on November 28, 2007, concerning his allegedly releasing his track and time permit at 9:30 a.m. on November 6, 2007, while gang vehicles were still occupying the limits of the track and time. The hearing was held as scheduled. On December 7, 2007, Carrier notified Claimant that he had been found guilty of the charge and dismissed from service.

The record reflects that on November 6, 2007, Claimant was assigned as Foreman and

Employee-in-charge on Gang 5497 in the vicinity of Hermosa, Wyoming, testing number 2 main track between CPW 545 and CPW 549. Claimant released his track and time permit even though trucks remained on the track. Claimant realized his mistake and secured a new track and time permit from the dispatcher. In a statement given on the day of the incident and in his testimony at the hearing, Claimant admitted his responsibility. Carrier clearly proved the charge by substantial evidence.

The critical issue is the severity of the discipline imposed. Our role is not to review the discipline de novo. We may only modify the level of discipline if we determine that it is arbitrary, capricious or excessive. In the instant case, considering all of the peculiar facts and circumstances, including that Claimant's mistake was a very serious act of negligence which could have led to serious personal injury or death, Claimant's eleven and a half years of service, Claimant's forthrightness in coming forward immediately and admitting his mistake, and Claimant's taking action as soon as he realized his mistake to correct the situation, we conclude that the penalty of dismissal is excessive. We award that Carrier shall reinstate Claimant to service with seniority unimpaired but without compensation for time out of service. As a condition of Claimant's reinstatement, he shall be disqualified from serving as Foreman until such time as he is approved by his manager to bid and attempt to requalify for a Foreman's position.

AWARD

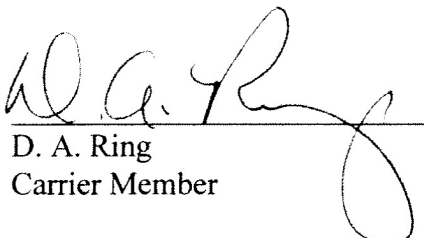
Claim sustained in accordance with the Findings.

ORDER

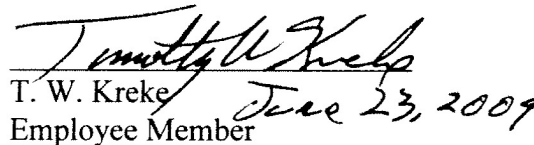
The Board having determined that an award favorable to Claimant be issued, Carrier is ordered to implement the award within thirty days from the date two members affix their signatures hereto



Martin H. Malin, Chairman



D. A. Ring
Carrier Member



T. W. Kreke
Employee Member

June 23, 2009

Dated at Chicago, Illinois, June 23, 2009