

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employes Division - IBT

and

Union Pacific Railroad

Case No: 141
Award No: 141

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The termination of Mr. L. Roan pursuant to Rule 48(k) of the Agreement in connection with being absent from his assignment for at least five (5) consecutive workdays from July 1, 2017 through July 7, 2017 was unjust, unwarranted and in violation of the Agreement (System File MK-1748U-606/1695859 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant L. Roan shall be reinstated to the Carrier’s service in his former position with seniority and all other rights restored, unimpaired and with the letter of dismissal being expunged from his personal record and he shall be made whole for any and all loss beginning on July 20, 2017 and continuing.”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The Claimant had been employed by the Carrier for approximately 27 years and was working as a Tie Crane Operator at the time giving rise to this incident. The Carrier alleged the Claimant was absent without authority for more than five consecutive days beginning July 1, 2017 and continuing through July 7, 2017. On July 19, 2017, the Carrier advised the Claimant he had been absent without proper authority per Agreement Rule 48(k) and was being considered as having voluntarily forfeited his seniority rights and employment. After conference on the issue, the parties were unable to reach resolution of the matter.

Rule 48(k) states the following:

“Employees absenting themselves from their assignments for five (5) consecutive working days without proper authority will 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 General Chairman will be furnished a copy of letter written to an employee pursuant to this Section. The format utilized will be standardized.

Employees who voluntarily forfeit their seniority rights and employment relationship pursuant to this section and who desire to furnish a reason why proper authority was not obtained, may request a conference with the Carrier Officer involved. If such conference is requested, the employee will have the prerogative of furnishing a written reason for the unauthorized absence, or Carrier may record the reason offered for the unauthorized absence for five consecutive working days. The Carrier will make every effort to render a decision at the conclusion of such conference.”

The Organization argues a) the Claimant did not abandon his job, and b) the Claimant missed work for legitimate reasons and should not have had his seniority terminated.

The Carrier argues a) the Claimant’s seniority was properly removed pursuant to Rule 48(k), b) the Claimant was afforded all the elements of due process required by the Agreement and there were no procedural defects serious enough to void the Carrier’s action, and c) the Organization failed to satisfy their burden proving a violation of the Agreement.

Based upon a thorough review of the record, the Board finds the Organization failed to meet its burden and convince the Board that the Carrier violated the Agreement. In the instant case, the Claimant’s own statement and supplied documentation, as detailed below, did not address his failure to obtain proper authority to be absent from work beginning July 1, 2017 and continuing through July 7, 2017. The Claimant’s first date of absence was July 1, 2017, but his car was not towed until July 2, 2017. Although the Board is sympathetic to the situation regarding the Claimant’s father-in-law, the Claimant’s statement indicated that the emergency phone call regarding his father-in-law came after he picked up his vehicle on July 10, 2017. Furthermore, the supplied obituary indicates funeral services on July 15, 2017. Both these dates fall outside the dates of incident and fail to explain why the Claimant did not obtain proper authority for his absences between July 1, 2017 and July 7, 2017. Despite the Organization’s argument that the Claimant did not “walkaway” willfully from his employment, there is no

evidence in the record that provides a valid basis to find the Carrier's decision to be arbitrary or capricious. As such, the claim is denied.

Although the Board may not have repeated every item of documentary evidence nor all the arguments presented in the record, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD:

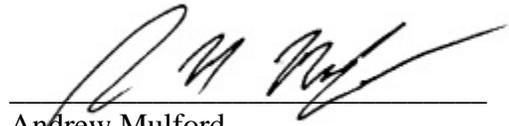
The claim is denied.



Paul Betts
Neutral Member
Dated: 08/01/2019



Chris Bogenreif
Carrier Member
Dated: 08/01/2019



Andrew Mulford
Labor Member
Dated: 08/01/2019