

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 142
Award No: 142

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's termination of Mr. W. Blackhoop's seniority, by letter dated September 25, 2017, for allegedly being absent without proper authority commencing September 11, 2017 and continuing through September 25, 2017 was arbitrary, unsupported by the record and in violation of the Agreement (System File B-1748U-210/1699361 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant W. Blackhoop's employment status must be reinstated, the violation expunged from his personal employment record and he made whole for any and all loss."

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. Parties to said dispute were given due notice of hearing thereon.

Claimant Walter Blackhoop was hired on June 4, 2014. On September 3, 2017, Claimant logged into the electronic bulletin system (iTrakforce) and placed his bid for a track laborer position that was advertised via Bulletin NSL61986. This occurred at 16:33 hours. On September 7, 2017, Claimant was awarded the position. Despite bidding on and being awarded the position, Claimant did not report for duty and did not contact his manager for permission (authority) to absent himself. Claimant was absent from his assignment from September 7, 2017 through and including up to the time he was displaced from the position on September 19, 2017.

By letter dated September 25, 2017, the Carrier issued Claimant a Rule 48(k) letter. The letter asserted that Claimant had been absent without proper authority commencing on September 11, 2017 and continuing in excess of five (5) days. Based on this, the Carrier informed Claimant that he had forfeited his seniority rights and employment relationship via Rule 48(k)'s self-executing seniority provisions.

The Carrier argues that the Claimant voluntarily forfeited his seniority and employment when he was absent without authority. The Organization requested a conference into the matter and the Carrier scheduled the conference and held the conference with the Organization. Claimant Blackhoop did not even attend his own Rule 48(k) hearing. Nothing presented by the Organization during that conference warranted overturning the loss of seniority.

The Organization argues that the Carrier's use of Rule 48(k) in these circumstances is highly inappropriate. As identified during the on-property handling, the purpose and intent of Rule 48(k) is to allow for the seniority termination of employees who walk away from their position without intent to return. The facts in the instant case show that Claimant was clearly not such an employee. He exhibited behavior that evidenced a clear intention to retain his seniority and his employment. While he may have been dealing with various personal matters during the time in question, it is important to note that the Carrier utilized the automatic provisions of Rule 48(k) to terminate Claimant, rather than charging him with a disciplinary infraction and investigating and dismissing him in that manner.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. A careful review of the record convinces the Board that, under the circumstances of this case, the Carrier has met its burden of proving that the dismissal was for just cause.

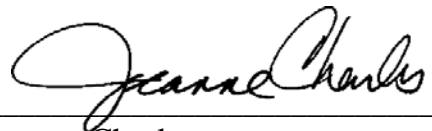
Rule 48(k) states, in part "Employees absenting themselves from their assignments for five (5) consecutive working days without proper authority will be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained." As pointed out by the Carrier, Claimant voluntarily forfeited his seniority and employment when he was absent without authority. The Organization requested a conference into the matter and the Carrier scheduled the conference. The conference was held on November 7, 2017. Claimant Blackhoop did not attend the conference. However, the Organization appeared on his behalf. In the Carrier's view, nothing presented by the Organization during that conference warranted overturning the loss of seniority. The record before this Board does not demonstrate that the Carrier's decision was arbitrary, capricious or an abuse of discretion. Rule 48(k) is a self-executing rule that was negotiated by the

parties and we find no basis to disturb the Carrier's decision.

Further, the Union's contention that the Carrier violated Rule 48(k) by failing to make a decision at the end of the conference is also not a basis to disturb the discipline. There was considerable debate in the record about whether the management official conducting the conference provided his decision at the end of the call. Whether he did or not, is not dispositive of whether procedural flaws exist. The language of Rule 48(k) does not require the management official to make a decision at the end of a conference. It states that the Carrier will "make every effort to render a decision at the conclusion of such conference." This language does not make it mandatory for a decision to be rendered. Accordingly, the relief sought by the Organization is denied. The dismissal shall remain on Claimant's personal record.

AWARD:

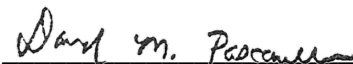
Claim denied.



Jeanne Charles
Neutral Member

William C. Ince

William C. Ince
Carrier Member
Dated: April 24, 2020



David M. Pascarella
Labor Member
Dated: 4-24-2020