

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 148
Award No: 148

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (considered as having resigned and your name removed from the roster per Rule 48 of the Agreement) of Mr. R. King, by letter dated February 9, 2018, in connection with allegations that his alleged absence from assignment without proper authority on December 8, 2017 was excessive, unduly harsh and an abuse of discretion (System File B-1848U-201/1703121 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. King shall now be made whole by compensating him for all wage and benefit loss suffered by him for his employment termination and for any and all expenses incurred or lost, having the alleged charges expunged from his personal record and his also being made whole for any and all loss of Railroad Retirement month credit and any other 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.

This is a discipline case involving Ronnie King, hereinafter referred to as Claimant, who at the time of the incident had established and maintained thirty-six (36) years of seniority in the Carrier's Maintenance of Way Department. Claimant was found to have resigned from his position pursuant to Rule 48 of the Agreement between the Carrier and the Organization.

Specifically, Claimant was employed as a System Assistant Foreman assigned to Gang 9083 working in Battle Mountain, Nevada when he voluntarily left his work site without completing a full shift on December 8, 2017. After completing four and one-half (4.5) hours of work, at approximately 09:00, Claimant made the decision to leave the worksite without the permission of his supervisor. Claimant then observed additional scheduled vacation time and returned to work on January 2, 2018. Upon his return, Claimant was questioned by management to determine the facts surrounding his decision to leave the work site.

By letter issued on January 9, 2018, Claimant was advised he had failed to provide just cause for his absence and that his seniority had been removed under the provisions of Rule 48. Claimant requested an investigative hearing relative to his dismissal, and the hearing was properly held on January 31, 2018. Following review of the transcript and evidence, a decision was rendered by AVP Engineering – Track Programs Eric Gehringer on February 9, 2018 confirming that Claimant voluntarily left his work site without proper authority. The Organization filed a claim. The claim was timely, properly presented and handled by the Organization at all stages of appeal up to and including the Carrier's highest appellate officer. Because the parties were unable to resolve the matter on the property, the matter is now before this Board for final resolution.

The Carrier argues that under Rule 48 an employee may be withheld from service pending the outcome of an investigation and hearing. A notice of investigation is sent describing the charges alleged and an investigation is held. A decision is then rendered based upon the facts and evidence produced during the investigation. Under Rule 48(l) an employee who voluntarily leaves his work site without proper authority need not be granted a hearing prior to dismissal. The rule is self-executing. By leaving his work site without proper authority on December 8, 2017, Claimant voluntarily forfeited his seniority rights and employment relationship.

The Organization challenges the discipline on procedural grounds and the merits. Regarding the procedural grounds, the Organization contends that the Carrier failed to comply with Rule 48 and provide Claimant with various procedural rights and protections. Based on these failures, the instant charges and discipline must be overturned. Secondly, the Carrier failed to provide a fair and impartial hearing by having someone other than the conducting officer issue the Claimant's discipline. Furthermore, Carrier failed to hold a formal hearing for the Claimant within thirty (30) days of knowledge of the incident as prescribed by Rule 48. Lastly, it is clearly shown in the transcript of the official hearing, a Carrier manager knew of the incident on the date of December 8, 2017. The Carrier knew of the incident long before this date and unilaterally extended the time limits.

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, there is sufficient evidence to uphold the dismissal.

Regarding the procedural objections, the Board finds the investigation was held in a timely manner and both Claimant and his representative were given every opportunity to produce witnesses and evidence at the hearing. We find that the use of telephonic witnesses was an acceptable means of obtaining testimonial evidence. The finding confirming Claimant voluntarily left his work site without proper authority was based solely upon information brought forth during the hearing. Claimant was provided a full, fair and impartial hearing in which he was afforded all the due process required by the Collective Bargaining Agreement between the parties. The Board finds no basis to conclude that Claimant's due process rights were violated.

On the merits, Rule 48(l) of the agreement between The Brotherhood of Railroad Maintenance of Way Employees and The Union Pacific Railroad Company (Agreement) states:

Employees need not be granted a hearing prior to dismissal in instances where they refuse to work, voluntarily leave the work site without proper authority or involuntarily leave their job as a result of apprehension by civil authorities, willfully engage in violence or deliberately destroy company property. Such employees may, however, make request for a hearing relative to their dismissal, and request therefore must be made within (14) calendar days from date of removal from service.

Under this rule, the burden is not on the Carrier to prove that Claimant was not granted authority to leave the property. The burden rests with the Organization to prove that Claimant did not leave voluntarily or prove that he had permission to leave the work site and be absent.

In this case, Claimant was the foreman in charge with a higher level of responsibility to help lead activities of a gang of other craft employees. As part of their employment relationship, employees are expected to work as assigned. They are not granted authority to come and go as they please without manager approval. The record reflects that Claimant made the decision to leave without completing his shift and without manager approval. There is no evidence that he made any attempts to communicate proactively with his manager or respect his authority to approve absences. He did not utilize any accrued benefits that would allow him to be off-site such as a vacation day or personal leave time. Claimant failed to prove that he was authorized to leave the worksite. Accordingly, the relief sought by the Organization is denied. The dismissal shall remain on Claimant's personal record.

AWARD:

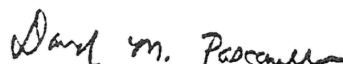
Claim denied.



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