

PUBLIC LAW BOARD 7660

PARTIES) UNION PACIFIC RAILROAD COMPANY
)
TO) VS.
)
DISPUTE) BROTHERHOOD OF MAINTENANCE
) OF WAYEMPLOYES DIVISION –
) IBT RAIL CONFERENCE

Public Law Board 7660 consisted of the regular members and in addition Referee Meeta A. Bass when award was rendered.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The termination of Mr. J. Breshears pursuant to Rule 48(k) of the Agreement in connection with being absent from his assignment for at least five (5) consecutive workdays per letter dated November 23, 2020, was unjust, unwarranted and in violation of the Agreement (System File A-2048U-007/1748005 UPS).

2. As a consequence of the violation referred to in Part 1 above, Claimant J. Breshears shall now be returned to service and ‘... be made whole by compensating him for all wage and benefit loss suffered by him for his employment termination, any and all expenses incurred or lost as a result, and the charge be expunged from his personal record. Claimant must also be made whole for any and all loss of Railroad Retirement month credit and any other loss.’ (Employees’ Exhibit ‘A-1’).”

FINDINGS:

The Board, upon the whole record and all the evidence, finds that:

The Carrier or Carriers and the Employee or Employees involved in this dispute are respectively Carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. The Board has jurisdiction over the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.

The Carrier hired the Claimant on May 30, 2011. During the period in question, the Carrier assigned the Claimant the position of an Extra Gang Foreman. On October

30, 2020, the Claimant left work without permission. On November 1, 2020, his Manager contacted the Claimant to discuss his situation; the Manager recommended various employee assistance programs sponsored by the Carrier. On November 3, 2020, the Claimant showed up for work and slept in his vehicle. On November 4, 2020, he texted his Manager to explain he did not have appropriate boots or PPE, and he went home without pay after the fact. From November 5 through November 13, 2020, the Claimant did not report to work and did not contact his Manager. The Claimant reported to work on November 16, 2020. His Manager informed him that he had already initiated Rule 48(k) and sent him home. By letter dated November 23, 2020, the Carrier notified the Claimant his seniority was terminated per Rule 48(k) due to being absent without proper authority from November 4, 2020, to November 13, 2020.

The Organization requested a conference according to Rule 48(k). On December 10, 2020, a Rule 48(k) conference call was held between the parties. The Claimant responded he was under the impression his Manager had given him verbal permission to take excused absences to mitigate issues in his personal life. The Manager denied allowing the Claimant to be absent from work. Payroll records from November 4, 2020, through and including November 13, 2020 were submitted, which indicated that he was absent (902, AB), which was otherwise approved as opposed to 902 (UA) unauthorized absence. Following the conference, the Carrier, by letter dated February 11, 2021, notified the Claimant of its decision, confirming the Claimant voluntarily forfeited his seniority when he was absent for eight (8) consecutive workdays without proper authority. The Carrier recorded the reasons for his absences, the reasons were reviewed, and the Carrier decided to uphold the Claimant's dismissal under the self-executing provisions of the rule.

The Organization filed a claim disputing the Carrier's decision on December 15, 2020. By letter dated February 11, 2021, the Carrier denied the claim. The Organization appealed the Carrier's decision on March 23, 2021. The Carrier denied the appeal on May 20, 2021. A conference was held on June 2, 2021 without resolution. The parties did not resolve the claim, so this dispute has now been escalated to this Board for its ultimate resolution.

The Organization argues the Claimant's termination was improper because the Claimant was led to believe by his Manager that he was permitted to take time off to

address personal matters. Payroll records support the authorization of the Claimant's absences, asserting the Claimant did not willfully abandon his job. It is Carrier's position the Claimant voluntarily forfeited his seniority and employment relationship when he failed to protect his assignment for eight (8) consecutive days. Carrier complied with the self-executing provisions of Rule 48(k) and dismissal is the consequence of Rule 48(k) absent without proper authority violations.

Rule 48 (k) reads:

"RULE 48 - DISCIPLINE AND GRIEVANCES ***

(k) 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 Board carefully considered the record in its entirety. We note at the outset the Organization, as the moving party in this dispute, has the burden of proof to support its claim. Based on our review of the record, this Board finds the Organization has met that evidentiary burden. While the statements of the Manager and the Claimant conflict, the payroll records support the Claimant's position. The Carrier's claim there was an error in the coding is a unilateral mistake on a material issue and insufficient to support the Carrier's position.

Usually, self-executing forfeiture clauses are designed to apply to employees who have abandoned their jobs. Nonetheless, the negotiated language of this Article considers a forfeiture in circumstances wherein the contractual language is met. The evidence shows there was communication between the Claimant and his Manager

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regarding the undisclosed condition and the need for assistance. The Claimant reported to work on November 3 and 4, with no disciplinary measures taken for his behaviors on those dates. Additionally, the Claimant showed up to work on November 16, 2020, seven days before receiving the termination letter dated November 23, 2020. Previous awards have considered miscommunication when determining an appropriate remedy in similar cases, and miscommunication is appropriate in this instance. Therefore, this Board reinstates the Claimant with seniority and other benefits, but no back pay is awarded.

AWARD

Claim Sustained in accordance with these findings.

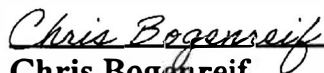
ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.


Meeta A. Bass

Neutral Chairperson

Dated: Sept. 28, 2023


Chris Bogenreif

Carrier Member

Dated: September 29, 2023


John Schlismann

Organization Member

Dated: September 28, 2023