

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

Public Law Board consisted of the regular members and, in addition, Referee Meeta A. Bass when this Award was rendered.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The termination of Mr. H. Ramone pursuant to Rule 48(k) of the Agreement in connection with allegedly being absent from his assignment for at least five (5) consecutive workdays per letter dated December 22, 2021 was unjust, unwarranted and in violation of the Agreement (System File MK-2248U-601/1771151 UPS).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant H. Ramone shall now be reinstated and compensated for all wages and other benefits lost beginning February 1, 2022. This is when Claimant stated he would be able to return.”**

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 on June 21, 1934. The Board has jurisdiction over the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.

The Claimant works a Z-5, Tuesday to Tuesday work schedule. The Claimant's niece passed away at nineteen (19) years old on November 14, 2021. Shortly after that, the Claimant's son passed away at thirty-eight (38) years old. His niece's funeral was held on December 1, 2021, and his son's funeral was held on December 3, 2021.

Claimant resides on a reservation, and does not have reliable cellular or email access at home. The Claimant contacted his Manager and requested to take bereavement leave from November 30 through December 3, 2021. The Claimant returned to work on December 5 and worked through December 7, 2021. The Claimant observed rest days from December 8 through 13, 2021. The Claimant was scheduled to work December 14 – December 22, 2021. The Claimant failed to report for duty between December 14, 2021, and December 22, 2021. The Claimant did not contact his Manager or supervisor to obtain authority to be absent. His Manager contacted the Claimant regarding his absence on December 13, 2021; the Claimant returned his call later that evening when the Claimant requested to stay off work. His Manager marked the Claimant absent with authority on December 14 and 15, 2021. The Claimant did not report for work between December 16 through December 20, 2021, resulting in the Claimant's disciplinary letter dated December 22, 2021. The Claimant sought counseling; the counseling records indicate his first session was on January 6, 2022.

The Carrier issued a Notice of Investigation letter dated December 22, 2021, stating: "...to develop the facts and determine your responsibility, if any, in connection with your alleged violation of the Union Pacific Railroad Attendance Policy. While employed as a/an Sys Laborer with Union Pacific Railroad, you allegedly failed to protect your employment on a full time basis through frequent or pattern layoffs and/or failure to report for service from 12/16/2021 through 12/20/2021. If such charges are proven, you may be assessed a THIRD OFFENSE ATTENDANCE violation of the Union Pacific Railroad Attendance Policy..."

The parties agreed to address the claim through Rule 48(K) seniority termination. The parties conducted a Rule 48 (K) conference regarding the termination on February 3, 2022. The Claimant appeared with his representative. The Carrier determined there was no justifiable reason to be absent five consecutive working days and upheld the seniority termination. The Carrier dismissed the Claimant.

The Organization filed a claim by letter dated February 9, 2022, and the Carrier denied the claim on March 29, 2022. The Organization advanced the appeal by

letter dated April 8, 2022, and the Carrier denied the same by letter dated May 24, 2022. A formal conference was held with no resolution of the claim on September 6, 2022. The Organization submitted a post-conference letter on September 20, 2022, requesting the Carrier re-evaluate their position or the matter would be progressed to the National Railroad Adjustment Board. The Carrier's position remained the same by letter dated October 6, 2022. This matter is before this Board for a final resolution of the claim.

"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 Carrier contends the Claimant was properly dismissed for unauthorized absence in December 2021 after failing to secure proper authorization despite previous warnings and conferences. The Carrier asserts Rule 48 (k) plainly states that employees absent from work for five consecutive days without permission forfeit their seniority rights and job. The Claimant did not show up for work on December 16, 17, 18, 19, 20. The Carrier asserts the Claimant has had multiple unauthorized absences documented. On August 6, 2020, the Claimant signed a Conditional Offer of Reinstatement with a 24-month probationary period. The Carrier suggests the Claimant was familiar with FMLA and EAP and could have sought assistance. The Carrier opines the decision to uphold the Claimant's forfeiture of seniority rights and employment relationship for his unauthorized absence was not arbitrary or harsh given his record and knowledge of the rules.

The Organization argues that the Claimant did not voluntarily leave his job or show any intention of abandoning his employment. Despite the Carrier terminating the Claimant based on procedural provisions outlined in the Agreement, the Organization contends that the Carrier overlooked the final clause of Rule 48(k), which states, "...unless justifiable reason is shown as to why proper authority was not obtained." With a tenure of forty (40) years, the Claimant faced significant personal crises, including the loss of two (2) family members, one of which was his son, within a short period. The Organization argues these tragedies affected his ability to work. The Organization asserts the Claimant communicated these events to his Manager as they occurred, sought counseling for support, and fully informed the Manager about his challenges before his seniority was terminated. Additionally, the Organization argues the Manager failed to offer FMLA and EAP to the Claimant. Although the Claimant had used FMLA in the past, he did not believe it applied to this situation. The Organization maintains the purpose and intent of Rule 48(k) are to allow for the seniority termination of employees who walk away from their position without intent to return, and this is not the Claimant, who proactively contacted his supervisor to discuss personal issues before the seniority termination occurred.

After carefully considering the record, this Board acknowledges that the Claimant met the literal requirements of Rule 48(k) by being absent for at least five consecutive working days without authorization. However, general rules of interpretation of contract state contractual agreements should be read as a whole. So the Board must give meaning and consideration of the provision stating, "unless justifiable reason is shown as to why proper authority was not obtained." Upon reviewing the circumstances presented, this Board finds justification for the Claimant's absence. The Claimant's significant personal crises, including the loss of family members, notably his son, within a short period, undoubtedly impacted his ability to fulfill his work obligations. The Claimant made some effort to communicate these challenges to his Manager, sought counseling for support, and the Manager knew about his situation before the seniority termination occurred. Therefore, in light of these considerations, this Board concludes that terminating the Claimant was unjustified. Accordingly, the Claimant is reinstated without backpay, and health insurance, seniority rights and other benefits are restored.

AWARD

Claim sustained in part.

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.

/s/ Meeta A. Bass

**Meeta A. Bass
Neutral Chairperson**

Jennifer McNeil

Jennifer McNeil
Carrier Member
Dated: April 29, 2024

John Schlismann

John Schlismann
Organization Member
Dated: April 29, 2024