

PUBLIC LAW BOARD NO. 7660
CASE NO. 54

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT RAIL CONFERENCE

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The termination of Mr. T. Swaney’s seniority, by letter dated May 28, 2015 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File A-1548U-002/1629313 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Swaney shall now be returned to service with all benefits and rights unimpaired, made whole for all wage and benefit loss suffered as a consequence of his termination and the matter shall be removed from his personal record.”

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.

Claimant, an 17 year employee, was working on Gang 9620 as a TKO Operator in May, 2015. There is no dispute that he was absent without proper authority on May 18, 19, 20, 21, 26 and 27, 2015, and made no contact with management during that period. He was issued a letter on May 28, 2015 informing him that he was considered to have voluntarily forfeited his employment under the provisions of Rule 48(k). The Organization requested a conference, which was held on June 5, 2015. Therein Claimant stated that he was ill and had called his Foremen to let him know he would be missing work, the gang was transitioning between two supervisors so he did not know who to call, and he admitted that he made a mistake by not calling management to give them notice he would be missing work.

In the correspondence on the property, the Organization made clear that it did not condone Claimant's conduct and acknowledged Carrier's right to terminate Claimant under Rule 48(k), but requested a leniency reinstatement agreement to give Claimant a chance to prove that he learned from his mistake and could still be a valuable employee, arguing that the penalty was overly harsh for a long term good employee. It was Carrier's position that, since Claimant was absent without authority for 5 consecutive work days, his termination was appropriate under the self-enforcing language of Rule 48(k). Carrier found that no justifiable reason was offered for Claimant's absence without authority during the conference, and upheld its termination decision on the same day.

That relevant terms of Rule 48(k) provide:

RULE 48 - DISCIPLINE AND GRIEVANCES

(k) Employees absenting themselves from their assignments for five (5) consecutive work 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.

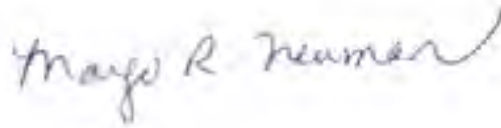
The General Chairman will be furnished a copy of letter written to an employee pursuant to this Section. The format utilized will be standardized.

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 the conference.

In cases where the Organization challenges Carrier's action in applying self-enforcing provisions such as Rule 48(k), it bears the burden of proving that the application was improper, arbitrary or an abuse of discretion. On the basis of the entire record, the Board concludes that the Organization failed to meet that burden in this case. There is no dispute that Claimant absented himself from his work assignment for 5 consecutive work days without authority. The Organization was unable to present to Carrier, or the Board, a justifiable reason why Claimant could not have obtained proper authority for his absence. Under such circumstances, Carrier was acting in compliance with Rule 48(k) in terminating his employment.

AWARD:

The claim is denied.

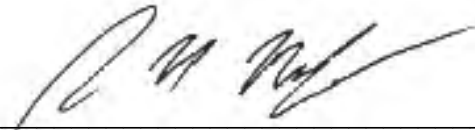


Margo R. Newman
Neutral Chairperson

Dated: 2/12/2018



K. N. Novak
Carrier Member



Andrew Mulford
Employee Member