

PUBLIC LAW BOARD NO. 7660  
CASE NO. 55

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 Claimant S. Yazzie pursuant to Rule 48(k) of the Agreement in connection with being absent from his assignment for at least five (5) consecutive workdays from December 1, 2014 through December 8, 2014 was unjust, unwarranted and in violation of the Agreement (System File RC-1548S-701/1627174 UPS).

2. As a consequence of the violation referred to in Part 1 above, Mr. S. Yazzie shall be reinstated to the Carrier’s service in his former position with seniority and all other rights restored, unimpaired and with the letter of dismissal being expunged 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 over 30 year employee, was assigned as a Tie Plug Inserter in work group #8514 since September, 2014, working a T-1 compressed half schedule. There is no dispute that he was absent without proper authority between December 1 and 8, 2014, and made no contact with management during that period. He was issued a letter on December 8, 2014 informing him that, due to this period of absence, he was considered to have voluntarily forfeited his employment under the provisions of Rule 48(k).

The Organization formally requested a conference on March 3, 2015, which was held via conference call on May 5, 2015. Therein Claimant stated that he had vehicle problems and weather delayed his ability to make the necessary repairs, he lived 25 miles from the nearest town, his cell phone reception on his remote location on the Native-American Reservation was spotty and he learned that his cell service had been disconnected, and it took him time to fix his car and drive to his service provider to get his cell service restored. Carrier's decision letter issued on May 5, 2015, rejected Claimant's explanation for his absence and inability to make contact requesting authorization, and, in light of his past employment record (containing many absences without authorization, terminations and reinstatements), and the fact that he was placed on a Last Chance Agreement in PLB 7528, Award 8, refused his request for reinstatement.

In the correspondence on the property, the Organization argued that Claimant was not a walk away employee, and that his inability to come to work or make contact was the result of car trouble and where he lived, explanations that were un rebutted, and should be considered mitigating factors, along with his 30 years of service, against strict application of the penalty set forth in Rule 48(k).

Carrier's position was that it properly applied the self-enforcing language of Rule 48(k), since Claimant was absent without authority for 5 consecutive work days. It

asserted that Claimant failed to show a justifiable reason for his continuing absence without authority during the conference, or in his written statement, or why proper authority could not have been obtained between his last work day on November 21 and December 5, 2014, his fifth consecutive work day absence. Carrier relied upon Claimant's history of absences without authority, its willingness to give him chances in the past to change his conduct going forward, and the fact that he was returned to service on a last chance basis in PLB 7528, Award 8 in determining that there was insufficient mitigation in his length of service to prevent the proper application of Rule 48(k), citing PLB 6302, Award 73 and PLB 6621, Case 48.

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.

As noted in Award 54 of this Board, 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. Although Claimant explained the reasons why he did not come to work between December 1 and 8, 2014, which involved his remote location, car trouble and lack of cell phone service, his own written statement notes that he had multiple vehicles and had obtained parts for them months earlier but not found the time to make the necessary repairs. Additionally, his choice of location and inability to maintain cell phone service, both involving decisions within his control, cannot excuse his failure to make contact with his supervisor to request authorization for his absence or meet his attendance obligations. See, e.g. PLB 6621, Case 48.

In this case, the Board can find no justifiable reason why Claimant could not have obtained authorization for his absence, especially when he was put on notice in PLB 7528, Award 8, that he was being given a last and final chance to show that he could meet his attendance obligations and not run afoul of Rule 48(k). Thus, Carrier was acting in compliance with Rule 48(k) in terminating his employment.

AWARD:

The claim is denied.

*Margo R. Newman*

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Margo R. Newman  
Neutral Chairperson

Dated: 2/12/2018

*K. N. Novak*

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K. N. Novak  
Carrier Member

*Andrew Mulford*

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Andrew Mulford  
Employee Member