

PUBLIC LAW BOARD NO. 7660

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT**

and

UNION PACIFIC RAILROAD COMPANY

**Case No: 59
Award No: 59**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. G. Clark, by letter dated August 25, 2015, for alleged [sic] leaving the work site without proper authority in violation of Rule 48(1) was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File MK-1548U-602/1640034 UPS).
2. As a consequence of the violation referred to in Part 1 above, Claimant G. Clark shall '... be made whole by compensating him for all wage and benefit loss suffered by him for his Level 5 termination, and the alleged charge(s) be expunged from his personal record.'"

FINDINGS:

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the Brotherhood of Maintenance Employees Division – IBT (hereinafter referred to as the “Organization”) and the Union Pacific Railroad Company (hereinafter referred to as the “Carrier”). Upon the whole record, a hearing, and all evidence as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing thereon. The Claimant was ably represented by the Organization.

The Claimant, G. Clark, has been employed by the Carrier since October 3, 2011 and held the position of Track Arc Welder at the time of his dismissal. On August 25, 2015, he

was notified in writing by the Carrier that he was dismissed from service alleging that he left the work site without proper authority on August 21, 2015. Following a request by the Organization, a hearing was held on September 10, 2015. On September 16, 2015 the Carrier informed the Claimant that he was found to have voluntarily left his work site without proper authorization and therefore, had forfeited his employment as provided for in Rule 48 of the Agreement. The Organization filed its claim on October 12, 2015. The record indicates that the Carrier denied subsequent appeals by the Organization and rendered its final decision on July 22, 2016. The Organization rejected the Carrier's decision and moved to have the matter adjudicated before this Board.

Relevant Contract Provisions

Rule 48 (I) – Discipline and Grievances, in pertinent part reads:

(1) 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 fourteen (14) calendar days from date of removal from service.

The Organization maintains that Rule 48 does not apply to the circumstances set forth by the Carrier. It also claims that the Carrier's hearing officer failed to provide the Claimant with a fair and impartial investigation when he interfered with the Organization's cross examination of the Manager of Track Maintenance, Michael Johnson.

The Organization avers that employees are consistently permitted to leave work early for personal business once they provide proper notice. It argues that the Claimant notified Johnson at the beginning of his shift on August 21, 2015, of his need to leave early before the end of his tour. The Organization contends that the Claimant also attempted to contact Johnson several times during the day regarding his need to leave early due to personal business. The Organization asserts that there is also an established practice of permitting employees to leave early for personal business when no advance notice is possible. In this

case, argues the Organization, the Claimant provided notice as soon as possible and did not abandon his position as claimed.

The Organization contends that the Carrier's assertion that the manager was not obligated to approve the request to leave early since the work crew was shorthanded is not supported by the record. It maintains that there is no evidence the Claimant's departure from the work site put the other employees at risk. Further, the Organization asserts that Johnson and the Claimant were on bad terms due to prior disputes, which led to the unjust discipline.

The Carrier maintains that Rule 48 (l) is self-executing and therefore, the Claimant forfeited his seniority when he left his work site without permission. It argues that the rule is clear and unambiguous and that the Organization has not met its burden of proof that the Carrier violated the Agreement. The Carrier asserts that the record establishes that the Claimant did not receive permission to leave early and that his actions caused harm to the employees at the work site.

The Carrier cites several awards issued by boards of adjudication between the parties where the self-executing application of Rule 48 has been upheld. It argues that it provided the Claimant with a hearing as provided for in Rule 48(l) and that the record confirms it did not violate the Agreement.

At the outset, the Board finds that there are no procedural errors by the Carrier that requires the charges to be dismissed. The hearing officer's conduct did not constitute bias nor did he prevent the Claimant from entering relevant evidence. There is no evidence that the Claimant was denied a fair and impartial investigation.

Turning to the merits, the Board finds that the Organization has not met its burden of proof that the Carrier violated the Agreement when it applied Rule 48(l) to the Claimant's conduct on August 21, 2015. By the Claimant's own admission he did not have permission to leave early. Such an act invokes Rule 48(l), which is similar to provisions found in different agreements between the parties, as having self-executing authority and leads to the forfeiture of seniority and ultimately dismissal. In Public Law Board ("PLB") No. 6302,

Award No. 67, it was held that “Claimant's dismissal for leaving early without authority was sanctioned by the express language of Agreement Rule 48(L).” See also PLB No. 6302, Award No. 50 and PLB No. 6621, Award No. 34 where similar contract language was found to be self-executing and resulted in forfeiture of employment.


Rule 48(l) provides the Claimant with the opportunity to explain his actions through a hearing regarding the dismissal even though the rule is self-executing. The Carrier then has the ability to review the Claimant’s reasons and supporting evidence that could justify abandoning his job, and the discretion not to impose the full force and effect of the rule. It is conceivable that an employee who is notified that a family emergency occurred may have to leave after providing notice and before obtaining permission. Here, however, the Claimant produced no such evidence. He testified that he needed to leave early for personal business. No other testimony or documentation was presented to justify his decision to leave his assignment and the Carrier’s property without authorization. The testimony of other witnesses confirms that the Claimant informed his supervisor, Johnson, that he needed to leave early. However, every witness consistently stated that Johnson did not give the Claimant permission but told him he could not promise anything given the work assignment that day. Mr. Johnson and the other witnesses testified that during the course of the workday it started raining and the Claimant was called upon to move up his truck to pick up employees. There was no response from the Claimant as he had already left his assignment without authorization. As such, the Carrier’s decision to dismiss the Claimant, as provided for in Rule 48(l) is neither arbitrary nor capricious.

The Organization’s valiant argument that a past practice exists that permits employees to leave for personal business without first obtaining authorization is unsupported. The Organization bears the burden of proof to show that such a practice exists or that Rule 48(l) does not apply to the Claimant’s actions. The record does not contain evidence of an established and binding past practice, nor does the Agreement contain any provision that restricts the Carrier from requiring employees who are on duty to obtain permission before leaving its property. Further, the Organization’s argument is inconsistent with the Claimant’s own testimony which confirms that permission was needed since he claims to have called his supervisor three times to inquire if he could leave early.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Organization has not provided substantial evidence that the Carrier violated the Agreement when it found that the Claimant forfeited his seniority and was dismissed.

AWARD

Claim denied.



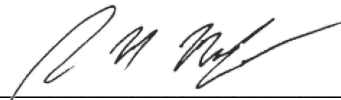
Michael Capone
Neutral Member

Dated: May 14, 2018



Alyssa K. Borden
Carrier Member

Dated: 05/15/18



Andrew M. Mulford
Labor Member

Dated: 5/15/18