

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)

) Case No. 39

)

) Award No. 37

)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

D. A. Ring, Carrier Member

Hearing Date: April 1, 2003

STATEMENT OF CLAIM:

1. The dismissal of Mr. J. R. Baldwin on June 18, 2000 for alleged violation of the Companion Agreement dated June 4, 1999 was arbitrary, capricious and sufficient cause and in violation of the Agreement (System File J-0048-78/1243628).
2. As a consequence of the violations referred to in Part (1) above, Mr. J. R. Baldwin shall be reinstated to service and his personal record cleared of any and all discipline related to Director Track Programs R. C. Chavez's letter dated June 18, 2000.

FINDINGS:

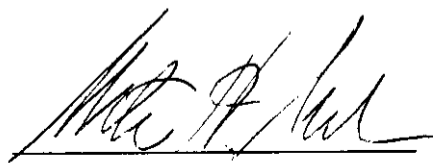
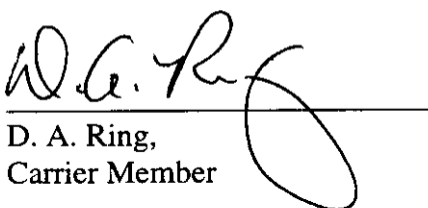
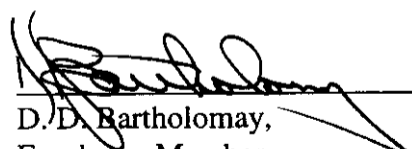
Public Law Board No. 6302, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On May 10, 1999, Claimant was administered a reasonable cause drug screen. Two days later, he contacted Carrier's EAP and arranged to enter an in-patient drug rehabilitation program. On June 3, 1999, Carrier notified Claimant to report for an investigation concerning his positive drug test on May 10. Carrier offered to allow Claimant to waive the investigation and enter into a Companion Agreement that would restore Claimant to service upon his completion of drug rehabilitation. The Companion Agreement provided that Claimant would be subject to a one year probationary period following his reinstatement and that his failure to comply with the Agreement would result in his return to a dismissed status without further hearing. Claimant accepted the offer and signed the Companion Agreement.

The record is clear that Claimant failed to comply with the Companion Agreement. Following his discharge from the in-patient rehabilitation program, Claimant did not begin his follow-up care in a timely manner and did not respond to efforts by Carrier's Manager Employee Assistance to contact him. We recognize that subsequently, Claimant was involved in a serious unrelated automobile accident which resulted in the amputation of one of his legs. We are sympathetic to Claimant's situation, but the record reveals that Claimant's violations of the Companion Agreement began before the accident. Based on the record presented, we conclude that the claim must be denied.

AWARD

Claim denied.


Martin H. Malin, Chairman
D. A. Ring,
Carrier Member
D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, August 26, 2003.