

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 42
)
) Award No. 40
)

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 discipline (seniority termination) of Mr. M. Tso for allegedly being absent from his assignment without proper authority on September 23, 24, 25, 26 and 27, 2001 was arbitrary, capricious, without just and sufficient cause and in violation of the Agreement (System File J-0148-64/1299226).
2. As a consequence of the violation referred to in Part (1) above, Mr. M. Tso shall now be paid for all time withheld from service beginning on November 30, 2001, continuing until his return to service, benefits are claimed as if he had worked, we ask that the 48(k) letter be rescinded, that he be allowed to work and it is requested the unjust discipline be removed from his personal record.

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 October 8, 2001, Carrier notified Claimant that he had forfeited his seniority because he had been absent without authorization for five consecutive work days, i.e. September 23, 24, 25, 26 and 27, 2001. Rule 48(k) provides:

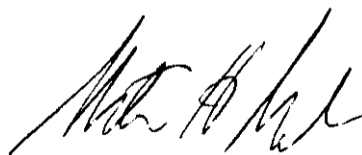
Employees absenting themselves from their assignment for five (5) consecutive working days without proper working authority shall be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained.

There is no question that Claimant was absent for five consecutive work days. The Organization contends that Claimant established justifiable reason for his failure to obtain proper authority, specifically that Claimant's absences were medically related.

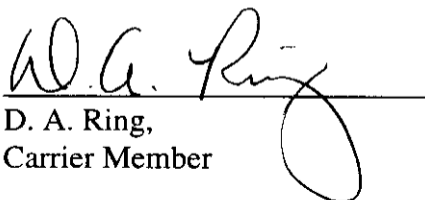
Claimant was authorized to be absent September 11-18, 2001. Initially during handling on the property, the Organization contended that Claimant's further absence was also authorized. Subsequently, during handling on the property, the Organization maintained that Claimant had attempted to contact his supervisor on September 23 and 24 without success. However, the only documentation submitted by Claimant indicated that he attempted to contact his supervisor on September 10 and 11. Based on our review of the record, we find no evidence justifying Claimant's failure to obtain authority for his absences on September 22-27, 2001.

AWARD

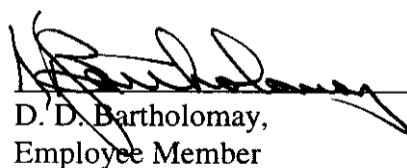
Claim denied.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, September 26, 2003.