

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 58
)
) Award No. 58
)

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

Hearing Date: March 22, 2004

STATEMENT OF CLAIM:

1. The dismissal (seniority termination) of Trackman T. J. Castorena for his alleged failure to return to service following a leave of absence for an on duty injury was without just and sufficient cause and in violation of the Agreement (System File J-0348-67/1373614).
2. Trackman T. J. Castorena shall be returned to service with seniority and all other rights unimpaired, compensated for all wage loss suffered commencing August 1, 2003 (date of medical release to return to service).

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.

The record reflects that on June 13, 2003, Claimant was advised that he had been granted a medical leave of absence to July 13, 2003. The letter so advising Claimant further stated (emphasis in original):

If you have **not** been released to return to work, during or at the expiration of this leave, ***you must supply to the above address, medical documents*** that will support your continued absence **prior to the expiration of your leave of absence**, as per the terms of your agreement.

Claimant did not request an extension of his leave, did not supply any medical documentation and did not return from leave. Consequently, in accordance with Rule 25(b), by

letter dated July 18, 2003, Carrier notified Claimant that his seniority had been terminated. By letter dated July 28, 2003, the Organization filed a claim on Claimant's behalf and attached to the claim, among other things, a medical release from Claimant's doctor releasing him to return to work on August 1, 2003, and a copy of a letter from the attorney representing Claimant in his FELA case to Carrier's claims agent, dated July 22, 2003, which enclosed a copy of the medical release.

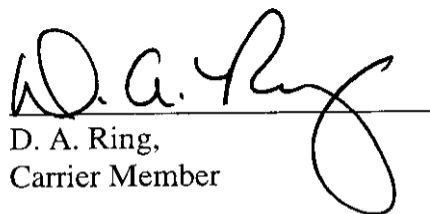
The Organization attacks Carrier's termination of Claimant's seniority as a bad faith effort by Carrier to dismiss an employee who sustained an on duty injury and pursued a claim over the injury. The record, however, is to the contrary. Carrier plainly and emphatically notified Claimant the under the Agreement he had to either return to work prior to the expiration of his medical leave of absence or supply medical documentation prior to the expiration of his leave of his inability to return upon the expiration of the leave. Claimant clearly failed to do so and the record contains no explanation or excuse for his failure to comply with the clear terms of the Agreement of which he certainly was aware. Accordingly, we are unable to find any violation of the Agreement and, consequently, unable to find any basis for requiring Carrier to reinstate Claimant.

AWARD

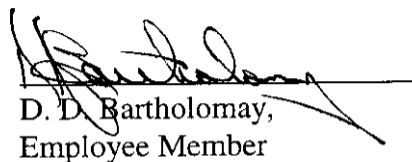
Claim denied.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, July 23, 2004