

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 6302**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

and

**UNION PACIFIC RAILROAD COMPANY**

)

) Case No. 73

)

) Award No. 72

)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

D. A. Ring, Carrier Member

Hearing Date: February 16, 2005

**STATEMENT OF CLAIM:**

1. The discipline imposed on Foreman J. P. Beach for his alleged unauthorized absence on September 2 and 3, 2003 was without just and sufficient cause and in violation of the Agreement (System File W-0448-156/1391575D).
2. As a consequence of the violations referred to in Part (1) above, Foreman J. P. Beach shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

**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 September 26, 2003, Carrier notified Claimant that it proposed discipline of UPGRADE Level 1 for his alleged unauthorized absence on September 2 and 3, 2003. Claimant rejected the offer and on October 9, 2003, Carrier notified Claimant to report for an investigation on October 13, 2003. The hearing was postponed to October 28, 2003, by mutual agreement of Carrier and the Organization. It was postponed again by mutual agreement to November 18, 2003, and postponed a third time to December 2, 2003. On December 2, 2003, Claimant did not appear and the hearing proceeded in absentia over the Organization's objection. On December 19, 2003, Carrier notified Claimant that he had been found guilty of the charge and disciplined at UPGRADE Level 1 – a letter of reprimand.

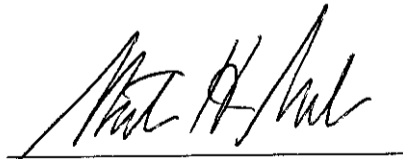
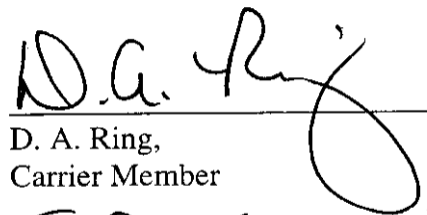
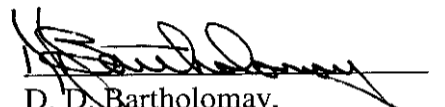
In Case No. 71, Award No. 70, we denied Claimant's claim concerning his dismissal for insubordination. In light of our decision in Award No. 70, there is no relief that we could afford

PLB 6302  
Awd 72

Claimant in the instant case, even if we were to find merit in his claim. Accordingly, we hold that the instant claim is moot.

**AWARD**

Claim dismissed.

  
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Martin H. Malin, Chairman  
\_\_\_\_\_  
D. A. Ring,  
Carrier Member  
5-9-05  
\_\_\_\_\_  
D. D. Bartholomay,  
Employee Member 5-9-05

Dated at Chicago, Illinois, April 22, 2005