

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 75
)
) Award No. 73
)

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 Agreement was violated when the Carrier terminated the seniority of M. B. Yazzie pursuant to Rule 48(k) because of absenteeism without authority between November 16 to November 23, 2003. (System File J-0348-81/1388465).
2. As a consequence of the violations referred to in Part (1) above, M. B. Yazzie shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all time lost.

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 November 25, 2003, Carrier notified Claimant that she had forfeited her seniority in accordance with Rule 48(k), in light of her unauthorized absences on November 16, 17, 18, 19 and 23, 2003. Rule 48(k) provides:

Employees absenting themselves from their assignments for five (5) consecutive working days without proper authority will 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 dispute that Claimant, who had been on a leave of absence, was released by Carrier's Medical Department to return to work with no restrictions on October 21, 2003. Carrier's records show that Claimant bid on and was awarded a position of Assistant Foreman on

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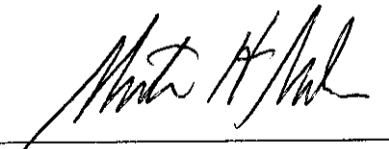
Gang 9063 by Bulletin GNSF06886, effective October 30, 2003. Claimant never reported to the position, resulting in the termination of her seniority pursuant to Rule 48(k).

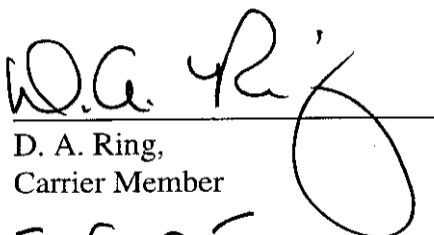
Rule 48(k) placed the burden on Claimant to demonstrate justifiable reason as to why authority was not obtained. Claimant maintained that she never bid on an Assistant Foreman position. She maintained that she bid on several Laborer positions but was not awarded any of them

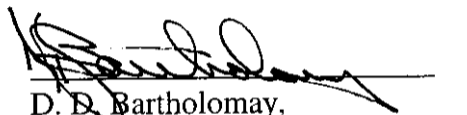
Carrier's records indicate to the contrary. They not only reflect the bid and award of the Assistant Foreman position but they also reflect that Claimant did not bid on three of the four Laborer positions she claimed to have bid on. Furthermore, Claimant maintained that she heard about the award from her brother and attempted to contact NPS on November 7, 2003, but reached an answering machine and left a message asking that her call be returned. Claimant also maintained that she could not document her call to NPS because, having no personal telephone, she placed the call from a public phone. Claimant's statement is inconsistent. If she had no personal telephone, we are left wondering, how could she have left a phone number for NPS to return her call. In any event, Carrier's records reflect a phone number for Claimant and five attempts by NPS to call her without success. Furthermore, there is no explanation from Claimant as to why she made no further attempt to contact NPS. Considering the record as a whole, we are compelled to conclude that Claimant has failed to show a justifiable reason as to why authority was not obtained. Carrier properly terminated her seniority pursuant to Rule 48(k).

AWARD

Claim denied.



Martin H. Malin, Chairman

D. A. Ring,
Carrier Member
5-9-05

D. B. Bartholomay,
Employee Member 5-9-05

Dated at Chicago, Illinois, April 22, 2005