

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)

) Case No. 98

)

) Award No. 90

)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

D. A. Ring, Carrier Member

Hearing Date: April 4, 2006

STATEMENT OF CLAIM:

1. The dismissal of Track Laborer Jones Begay for his alleged unauthorized absence on January 8, 9 and 11, 2005 was without just and sufficient cause, arbitrary and excessive, and undue punishment (System File J-0548-52/1421131).
2. Track Laborer Jones Begay shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wages loss suffered. Also, his record shall be cleared of this incident.

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 January 17, 2005, Claimant was notified to report for two formal investigations on January 25, 2005. The first notice charged Claimant with being absent without proper authority on January 8 and 9, 2005. The second notice charged Claimant with being absent without proper authority on January 11, 2005. Both notices advised Claimant that the alleged offenses could constitute his fourth absence without authority within a 36-month period which, under Carrier's UPGRADE, was grounds for termination.

The two notices were consolidated into a single hearing which was held as scheduled. On February 10, 2005, Carrier notified Claimant that he had been found guilty of the charges and dismissed from service.

The Organization contends that Carrier failed to afford Claimant a fair and impartial investigation because Carrier prejudged his guilt, as evidenced by Carrier's withholding Claimant from service pending investigation. We do not agree. Rule 48(o) expressly gives Carrier the authority to withhold an employee from service in the case of alleged serious or flagrant violations. Prior awards have consistently applied Rule 48(o) to employees charged with repeated instances of being absent without authority. *See, e.g.*, NRAB, Third Division Award No. 31910; PLB 6089, Award No. 3. In accordance with established precedent, we hold that Carrier acted in accordance with Rule 48(o) when it withheld Claimant from service.

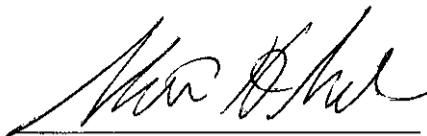
There is no dispute that Claimant was absent on the dates in question. On January 8 and 9, Claimant was absent due to the death of his cousin and on January 11, he was absent because his car broke down. We certainly sympathize with Claimant's loss, but his reasons for being absent are not at issue. What is at issue is his failure to obtain authority for his absences from his supervisor.

Claimant's supervisor was Track Supervisor T. A. Stotts. Claimant never obtained authority for his absences from Mr. Stotts. Indeed, when Claimant reported for work on January 10 and Mr. Stotts asked Claimant why Claimant did not contact him to obtain authority, Claimant had no response. During handling on the property, Claimant submitted a statement that he did call Track Supervisor B. D. Starr, but Claimant admitted that Mr. Starr told Claimant that he was no longer in charge of the gang and that Claimant had to obtain authority from Mr. Stotts. Thus, Claimant knew he needed to obtain authority from Mr. Stotts and failed to do so. We conclude that Carrier proved the charges by substantial evidence.

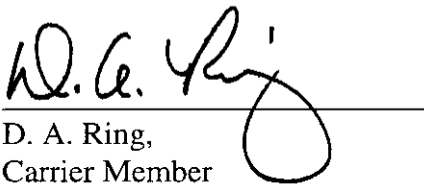
Carrier's UPGRADE call for dismissal on an employee who violates the same rule three times within thirty-six months. We previously upheld the application of this policy in Case No. 46, Award No. 47; *see also* NRAB Third Division Award No. 31910. In accordance with established precedent, we conclude that the penalty imposed was not arbitrary, capricious or excessive.

AWARD

Claim denied.

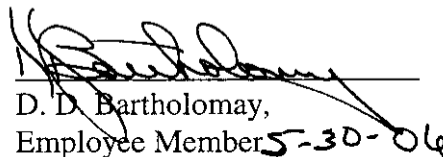


Martin H. Malin, Chairman



D. A. Ring,
Carrier Member

5-30-06



D. D. Bartholomay,
Employee Member

5-30-06

Dated at Chicago, Illinois, May 22, 2006