

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 103
)
) Award No. 94
)

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 Laborer K. A. Kelley for his allegedly leaving Company property without authorization on February 15, 2005 was without just and sufficient cause, in violation of the Agreement and based on an unproven and disproven charge (System File C-0548-105/1426279).
2. As a consequence of the violation referred to in Part (1) above, Laborer K. A. Kelley 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 February 23, 2004, Claimant was notified by Carrier that because he had left the jobsite voluntarily without authorization on February 15, 2005, he was considered as having forfeited his employment pursuant to Rule 48(L) of the controlling Agreement. In accordance with Rule 48(L), on February 25, 2005, the Organization requested a hearing on Claimant's behalf. On March 2, 2005, Carrier notified Claimant to report for a hearing on March 15, 2005. The hearing was held as scheduled. On April 1, 2005, Carrier notified Claimant that he had been found guilty of the charge and that he was dismissed from service.

Claimant in the instant case is the coworker who left the jobsite early with the claimant in

Case No. 101, Award No. 92 . The Organization has raised the same procedural arguments that it raised in Case No. 101, Award No. 92 . We reiterate that none of the arguments singularly or cumulatively provide a basis for overturning the discipline.

Claimant received a separate hearing from the one provided the claimant in Case No. 101, Award No. 92. Nor surprisingly, the testimony was essentially the same as that provided in the hearing for the claimant in Case No. 101. For the reasons detailed in Award No. 92, we find that Carrier proved the charge by substantial evidence.

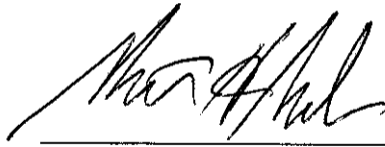
However, as in Award No. 92, we have concluded that the penalty of dismissal was excessive. Accordingly, Claimant shall be reinstated to service with seniority unimpaired but without compensation for time out of service.

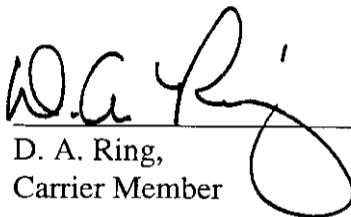
AWARD

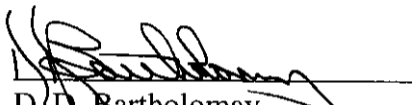
Claim sustained in accordance with the Findings.

ORDER

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto



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