

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
) Case No. 124
 and)
) Award No. 101
 UNION PACIFIC RAILROAD COMPANY)
)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
B. W. Hanquist, Carrier Member

Hearing Date: April 22, 2008

STATEMENT OF CLAIM:

1. The dismissal from service of Mr. M. K. Graves for his alleged violation of Union Pacific Rule 1.5, the Carrier's Drug and Alcohol Policy and Federal Regulations (Title 49 Part 382 Section 213) was not justified.
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall now be reinstated to his former position, be paid for all time lost, have his seniority and benefits reinstated intact, his personal record exonerated of all charges and receive expenses for attending the hearing.

FINDINGS:

Public Law Board No. 6402 upon the whole record and all of 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 March 20, 2007, Claimant was notified to report for a formal investigation on April 16, 2007, concerning his allegedly testing positive for an illegal substance during a follow-up drug test on March 2, 2007. The hearing was postponed to and held on April 23, 2007. Claimant did not appear for the hearing and it proceeded in absentia. On May 8, 2007, Carrier notified Claimant that he was dismissed from service.

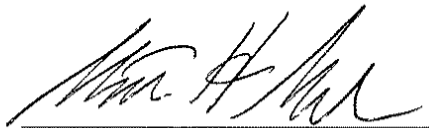
The Organization contends that Carrier violated Rule 21 by proceeding with the hearing in absentia. We do not agree. The record reflects that Claimant was given proper notice of the

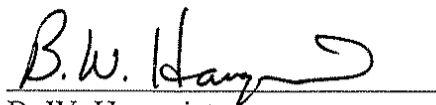
hearing and that he received that notice. The Manager Track Maintenance testified that he spoke with Claimant the morning of the hearing, asked Claimant whether he was going to be present at the hearing and Claimant responded that he would not attend the hearing because he did not want to drive 300 miles round trip to do so. Claimant chose not to attend the hearing of his own volition. Carrier acted properly when it proceeded in absentia.

The record is clear that on July 2, 2004, after having tested positive for an illegal substance, Claimant signed a Waiver Agreement under which he accepted a one-time offer to return to service, conditioned. among other things, on his contacting Carrier's Employee Assistance Program, completing the EAP-recommended rehabilitation program, being subject to follow-up drug testing for three years following his return to service and remaining drug free indefinitely after returning to service. The record is also clear that in a follow-up drug test on March 2, 2007, Claimant tested positive for marijuana. Carrier clearly proved the charge by substantial evidence and there is absolutely no basis for disturbing the discipline.

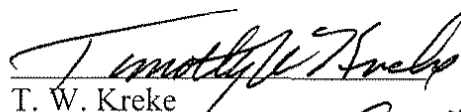
AWARD

Claim denied.


Martin H. Malin, Chairman


B. W. Hanquist
Carrier Member

Sept 17, 2008


T. W. Kreke
Employee Member

Sept 17, 2008

Dated at Chicago, Illinois, August 31, 2008