

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 145
UNION PACIFIC RAILROAD COMPANY) Award No. 121
_____)

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

Hearing Date: December 17, 2008

STATEMENT OF CLAIM:

1. The dismissal of Bridge Foreman Mark S. Simon for violation of GCOR Rule 1.6(Conduct) in connection with striking a co-worker in the face with a cardboard box and verbally threatening him with violence is unjust, unwarranted, and excessive (System File MW-08-51/1497347 MPR).
2. As a consequence of the violation outlined in Part (1) above, all reference to this incident shall be removed and discarded from Mr. M. S. Simon's personal files, with pay for all (straight time and over time) beginning on February 6, 2008 and on a continuing basis, with round trip mileage from his home and back for this investigation, reinstated back to work as of now, and all benefits due him and all seniority intact and unimpaired.

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 February 14, 2008, Claimant was notified to report for a formal investigation on February 21, 2008, concerning his having allegedly struck and verbally threatened a coworker on February 6, 2008, in violation of Rule 1.6. The hearing was held as scheduled. On March 12, 2008, Claimant was advised that he had been found guilty of the charge and had been dismissed from service.

The record reflects that on the morning of February 6, 2008, members of the gang were sitting in the gang truck when they noticed a cardboard boot box sitting on the hod of the truck. One of them took the box and placed it on Claimant's personal truck. Claimant returned to the area, took the box from his truck, opened the door of the gang truck and threw the box in the front seat, striking the Assistant Foreman in the face. Claimant also threatened the Assistant Foreman with bodily harm. Claimant admitted that he "lofted" the box into the front seat of the truck and admitted that he threatened the Assistant Foreman telling him that he was liable to "get his ass whipped." We conclude that Carrier proved the charges by substantial evidence.

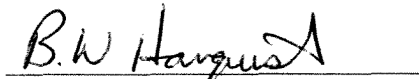
Carrier need not tolerate such violent behavior. Claimant was a relatively short term employee and we see no factors that would mitigate against the very serious nature of the offense. We cannot say that the penalty of dismissal was arbitrary, capricious or excessive.

AWARD

Claim denied.



Martin H. Malin, Chairman


B. W. Hanquist
Carrier Member 3-23-09


T. W. Kreke
Employee Member

Dated at Chicago, Illinois, February 26, 2009