

NATIONAL MEDIATION BOARD

**PUBLIC LAW BOARD NO. 6402
AWARD NO. 130, (Case No. 151)**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs

UNION PACIFIC RAILROAD COMPANY

**William R. Miller, Chairman & Neutral Member
T. W. Kreke, Employee Member
B. W. Hanquist, Carrier Member**

Hearing Date: September 23, 2009

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's decision to impose a Level 5 discipline and dismiss Claimant Jessie Rowley from service of the Carrier for the alleged violation of Union Pacific Rule 1.6(3) [Conduct (Insubordinate)] is harsh, unjust, unwarranted and in direct violation of the Agreement (System File MW-08-89/1505968D MPR).
2. As a consequence of the violation outlined in Part (1) above, we request that the Claimant be reinstated to service of the Carrier and be made whole as outlined in Rule 21 (f) of the Agreement."

FINDINGS:

Public Law Board No. 6402, 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 June 27, 2008, Carrier notified Claimant to appear for a formal Investigation on July 7, 2008, concerning the following charge:

"Please report to the La Quinta Inn & Suites, at 24868 I-45 North Spring, Texas, on Monday, July 7, 2008 at 1500 hours, for investigation and hearing on charges to develop the facts and place responsibility, if any, that while employed

as a Trackman, on Gang No. 9169, at Mexia, Texas, at approximately 1:00 p.m., on June 23, 2008, you allegedly willfully left your place of assignment without authority.

These allegations, if substantiated, would constitute a violation of Rule 1.6(3) (Conduct (Insubordinate)), as contained in the General Code of Operating Rules, effective April 3, 2005. Please be advised that if you are found to be in violation of this alleged charge, that the discipline assessment may be a Level 5 and may result in your dismissal."

On July 22, 2008, Claimant was notified that he had been found guilty as charged and was dismissed from service.

It is the Organization's position that the Carrier erred in its dismissal of the Claimant. It argued that at the time of the incident Claimant was regularly assigned as a Trackman on System Gang No. 9169, temporarily headquartered at Mexia, Texas, which is approximately three hours from his residence in Alto, Texas. The Claimant and his twin brother Jamie, traveled to and from work together because they both worked on the same system gang, shared a hotel room while working on the road and shared the same residence. According to it, a few days prior to June 23, 2008, the Claimant's brother Jamie had been feeling ill and despite taking some non-prescription drugs, he continued to feel poorly. On June 23rd while on the job the Claimant's brother experienced escalated discomfort/illness and he informed the Claimant that he needed to leave work and visit his personal physician. Both brothers were on a work bus at the time preparing to go to a new work site, when the Claimant asked the bus driver to let them out at their truck. The brothers exited the bus and Claimant then proceeded to take his brother to see his personal physician.

The Organization further argued that the Claimant attempted to contact their immediate Supervisor, but because neither brother had Assistant Foreman R. Richard's contact information, they instead contacted Foreman J. Scott (who was on vacation) and advised him of the situation which they assumed he would handle in the appropriate manner. It further explained that Jamie was not able to see his doctor on that date because the doctor's office was closed, so he went home and rested and saw the doctor the following day when he was given a shot and a prescription of antibiotics. It concluded that the Carrier failed to meet its burden of proof and requested that the discipline be set aside and the Claim be sustained as presented.

It is the position of the Carrier that Claimant was afforded a fair and impartial Investigation were it was proven that Claimant abandoned his assignment on June 23, 2008, without proper authority. It argued that discipline assessed was appropriate. It also argued that it offered to reduce the dismissal to a suspension which it believed was lenient, but that offer was rejected by the Claimant at his own peril. Therefore, it concluded that the discipline was proper and asked that it not be disturbed.

The Board has thoroughly reviewed the record and first notes that the instant case is a companion case to P.L.B. No. 6402, Case No. 152, involving the Claimant's brother which is addressed by this Board in Award No. 131.

The facts of the case indicate that on June 23, 2008, the Claimant and his brother were working as Trackmen on System Gang 9169. On that date at approximately 1:00 p.m., near Mile Post 181 the crew loaded onto the gang's bus to proceed towards the rail train near Corsicana, Texas. Shortly, thereafter, Claimant asked the Bus Driver L. Carter to stop the bus and let them off. On page 26 of the transcript Carter was questioned about the Claimant's departure from the bus and he testified as follows:

"Q And what were you doing that day as far as where were you supposed to take the individuals?

A I was supposed to take all the trackman to the train to load it- to load the train for equipmen

Q And so Mr. Rowley asked you to drop him off?

A Yes, asked me to drop him off so he could get something out of their truck.

Q Okay. And he never got back on?

A Never got back on the bus, no.

Q All right, did he- did they- at any time did he tell you that he was gonna take his brother home, his brother was sick or anything like that to you?

A No (*Underlining Board's emphasis*)

Mr. Carter continued to testify on pages 26 – 28 of the transcript that the bus had Emergency Response Forms in it which contained the immediate Supervisor R. Richard's contact cell phone number. He also testified that there was a radio aboard the bus and Supervisor Richards had a radio on him, neither of which the Claimant chose to use to call Richards of his intention to leave work. Testimony from Manager Noll on page 12 and Supervisor Johnson on page 16 of the transcript further confirmed that Emergency Response Forms are in all the vehicles to acquire Supervisor contact numbers.

On page 39 of the transcript, Claimant made a closing statement where he stated in pertinent part the following:

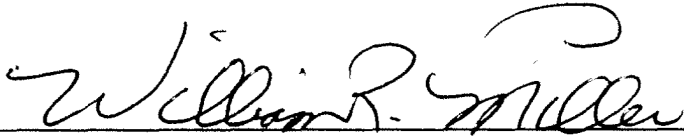
"I like my job. I know I messed up. I should have kept my mind on the job, but I couldn't. That's a good reason why I should have went home anyway, my mind wasn't focused on the job at hand."

It is clear from the record that the Claimant understood that the Carrier had proven that he had abandoned his assignment without proper authority and he was guilty as charged.

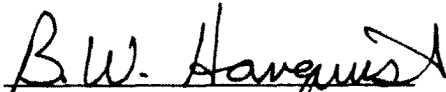
The only issue remaining is whether the dismissal was appropriate. At the time of the incident Claimant was a relatively short term employee with approximately three years of service. Claimant was offered two opportunities to return to service (November 14 and December 17, 2008) on a last chance leniency basis. Claimant purportedly rejected both offers account of its stipulations, unfortunately for him that choice was not wise. The Board finds no reason for mitigation and holds that the dismissal was not arbitrary, excessive or capricious. The discipline will not be set aside.

AWARD

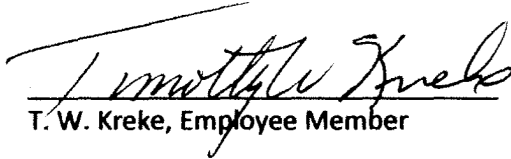
Claim denied.



William R. Miller, Chairman



B. W. Hanquist, Carrier Member



T. W. Kreke, Employee Member

Award Date: 12/9/09