

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6402
AWARD NO. 199, (Case No. 223)**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DIVISION - IBT RAIL CONFERENCE**

vs

**UNION PACIFIC RAILROAD COMPANY (Former Missouri Pacific
Railroad Company)**

William R. Miller, Chairman & Neutral Member
K. D. Evanski, Employee Member
K. N. Novak, Carrier Member

Hearing Date: June 4, 2013

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- 1. Carrier violated the Agreement when it assessed Claimant J. Marquez an unauthorized absence and failed to properly compensate him for December 5, 2011 (System File UP505JF12/1561799).**
- 2. As a consequence of the violation referred to in Part 1 above, Carrier shall now remove the unauthorized absence from Claimant's personal record and compensate him for twelve (12) hours at his respective rate of pay."**

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.

The facts indicate that the Claimant was regularly assigned as a Welder Helper on Gang 0579 under the authority of Supervisor B. Zelasny. Claimant did not attend work on December 5, 2011, resulting in the Claimant being marked as Unauthorized Absent (UA). The Claimant received notification of the UA on December 11, 2011. Subsequently, the Organization filed a claim per Rule 22 and requested that the Carrier remove the UA notation from the Claimant's record and that the Claimant be compensated for 12 hours at the straight time.

It is the Organization's position that the Carrier disciplined the Claimant without benefit of a formal Investigation when it assessed Claimant with an unauthorized absence and refused to properly compensate him for December 5th. The Organization argued that the Claimant

observed an authorized vacation day that was approved by the acting Foreman, and was not absent without authority. It asserted the Carrier committed a serious and substantive procedural violation by imposing the aforementioned discipline without first complying with the provisions of Rule 22. The Organization also offered multiple Awards attesting to the fact that the Carrier has historically treated unauthorized absences as a disciplinary issue under provisions of Rule 22, and thus, charged and investigated such employees prior to assessing discipline and because that was not followed in this instance the discipline must be set aside and the claim sustained. It concluded by requesting that the discipline be rescinded and the claim sustained as presented.

It is the position of the Carrier that it did not, as alleged, initiate any form of discipline and the Organization's claim was improperly filed. The Carrier documented the UA and notified the Claimant of the UA, but did not assess any discipline. Rule 22 dictates, that discipline matters are to be forwarded to the "highest officer designated by management to handle such matters". It argued that this was a Rules case which is a two step process whereby the Organization files an initial claim to which the Carrier responds followed by an appeal to the Carrier's response. The Organization failed to comply with the proper procedures outlined in the Agreement and because of that the claim is procedurally defective. Additionally, it argued the Claimant was not disciplined and the UA did not affect the Claimant's discipline level, nor did he incur any penalty. Lastly, it asserted that record shows that the Claimant did not perform service on December 5, 2011. It closed by asking that the claim remain denied.

After a thorough review of the record the Board has determined that the case will be resolved on its merits. Additionally, the Board finds no proof that the UA was a disciplinary notation placed on the Claimant's discipline record, therefore, the question at issue is whether or not the Claimant was off work without approval and whether or not the UA placed on his work history was appropriate. Claimant submitted a statement dated January 20, 2012, wherein he asserted that Supervisor Zelasney was in error when he suggested that the Claimant did not get approval to be off on December 5, 2011. Claimant stated that Acting Foreman A. Nichols approved his amended vacation request for December 5, 2011, in the presence of two fellow gang members. That statement was not effectively refuted, therefore, in accordance with arbitral precedence it must be considered to be factually correct. The Board finds and holds that the Claimant was authorized to be off on December 5, 2011, and that the "UA" should be stricken from his work history. Turning to the issue as to whether or not the Claimant was owed any monies for December 5, 2011, the vacation record indicates Claimant observed 11 hours of vacation on December 3 and eight hours vacation on December 4 and at that point his vacation hours were exhausted. Claimant did not have any remaining vacation to take on December 5, therefore, even though the Claimant was authorized to be off on that date he is not entitled to any monies because he had no available vacation time. The Board reiterates that the "UA" should be stricken from the Claimant's work history.

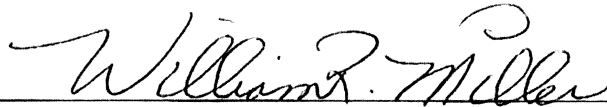
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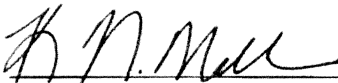
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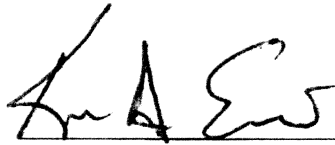
Claim partially sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed.



William R. Miller, Chairman



K. N. Novak, Carrier Member



K. D. Evanski, Employee Member

Award Date: 8-2-13