

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 51
UNION PACIFIC RAILROAD COMPANY) Award No. 31
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: November 15, 2004

STATEMENT OF CLAIM:

1. The dismissal (Level 5) assessed Truck Operator E. W. Mingo for his alleged dishonesty through the improper use of a Corporate Lodging Card on June 24 through June 26, 2003 was without just and sufficient cause, based on an unproven charge and in violation of the Agreement (System File MW-03-305/1374271).
2. As a consequence of the violations referred to in Part (1) above, Truck Operator E. W. Mingo 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. 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 July 8, 2003, Claimant was notified to report for a formal investigation on July 22, 2003, concerning his alleged dishonesty through the misuse of a Corporate Lodging Card June 24 - 26, 2003, at the Days Inn in Opelousas, LA. The hearing was postponed to and held on July 23, 2003. On August 1, 2003, Claimant was advised that he had been found guilty of the charge and had been dismissed from service.

The record reflects that Claimant and the other members of his gang were assigned to wrok away from their headquarters for the week of June 23, 2003. On June 23, 2003, Claimant and other members of the gang checked into a Days Inn in Opelousas, Louisiana. Claimant used a Corporate Lodging Card to pay for the room, so that the charge for the room would be billed

directly to Carrier. Claimant worked on June 23 and 24, 2003.

The record further reflects that Claimant requested and was granted the use of vacation days for June 25, 26 and 27. However, Claimant remained registered at the hotel on those days and the charges were billed to Carrier through Claimant's Corporate Lodging Card. Claimant had no authority to use the Corporate Lodging Card to bill Carrier for a hotel room on days he was not at work but was using vacation days. Claimant clearly misused the Corporate Lodging Card and Carrier clearly proved the charge by substantial evidence.

The record further reflects that on June 24, 2003, Claimant went home and learned that his landlord was evicting him and his family from their residence. Claimant took vacation days on June 25 - 27 to deal with this problem. However, Claimant forgot to check out of the hotel, resulting in Carrier continuing to incur charges for the hotel via the Corporate Lodging Card. Thus, Claimant's misuse of the card did not involve the type of intentional dishonesty that typically justified dismissal. Considering all of the peculiar facts and circumstances of the instant case, we find that the penalty of dismissal was excessive. Claimant is to be reinstated to service with seniority unimpaired but without compensation for time held out of service.

AWARD

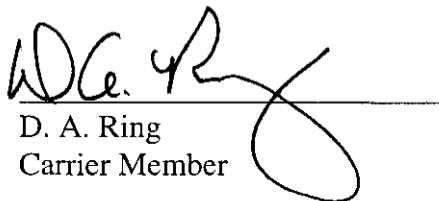
Claim sustained in accordance with the findings.

ORDER

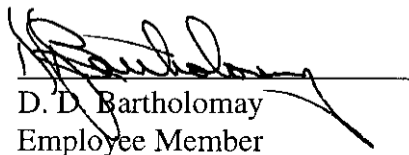
The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto



Martin H. Malin, Chairman



D. A. Ring
Carrier Member



D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, January 28, 2005