

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 50
)
) Award No. 42
)

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

Hearing Date: May 23, 2005

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier improperly terminated the seniority of Southern District Tie Gang employee A. J. Jack on June 23, 2003 (System File MW-03-302/1373650).
2. As a consequence of the violations referred to in Part (1) above, Mr. A. J. Jack 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 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.

Claimant was on a medical leave of absence from March 25, 2003, through April 22, 2003. On April 22, 2003, Claimant was medically cleared to return to service without restrictions. By letter dated April 22, 2003, Carrier notified Claimant to return to work within seven days of receipt of the letter or notify Carrier in writing within that seven day period the reasons he could not report. Carrier sent the letter certified mail, return receipt requested. The Postal Service ultimately returned the letter to Carrier marked "unclaimed". The Postal Service markings on the envelope reflect a second notice of the letter left for Claimant on April 30 and the letter returned on May 10.

By letter dated June 23, 2003, Carrier notified Claimant that, pursuant to Rule 13(d) of the Controlling Agreement, his seniority and employment were terminated due to his failure to

return to service following expiration of his leave of absence. Rule 13(d) provides:

Employees who are granted formal leaves as provided herein and who do not report on or before the first work day following the termination of their leave of absence will lose their seniority, except in case the employee furnishes satisfactory evidence that he was unavoidably delayed. When returning from absence from any cause such employee will be required to notify his employing officer not later than the end of the work day prior to the day he expects to go to work.

The Organization contends that Carrier violated Rule 21 by terminating Claimant's employment without holding a formal investigation. Rule 13(d), however, is self-executing. No formal hearing is required. Carrier did not violate Rule 21.

There is no question that Claimant failed to report for work following expiration of his leave of absence. The key question is whether Claimant furnished satisfactory evidence that he was unavoidably delayed, in accordance with Rule 13(d).

Claimant submitted the following written statement in support of his claim:

I spoken to my supervisor Mack on round 25 & 26 April right after the Dr released me. McPically we discuss my problem at home. He said he will work with me He told me to talk to Mr. Menchuka. It was o.k. to take 3 - 4 more. We spoken many times after that he called me.

Initially, we observe that Carrier offered no statement from Claimant's supervisor refuting Claimant's statement. On the other hand, the statement does not indicate what unit of time the supervisor approved "3 - 4 more." Was it three to four additional days of leave? Weeks?

Even assuming that the supervisor gave Claimant reason to believe that he could take an additional three or four weeks of leave, we note that Carrier waited two months before terminating Claimant's seniority. Claimant's statement did not establish that he was justifiably delayed for two months. The statement also did not explain Claimant's failure to pick up the certified letter notifying Claimant that he was to report to work within seven days.

This is not a case where Carrier acted hastily to terminate an employee's seniority. Rather, the record reflects that Carrier patiently waited two months and acted only after the certified letter was returned unclaimed. Under the circumstances, we find that Carrier did not violate the Agreement and the claim must be denied.

PLB 6402
Awd 42

AWARD

Claim denied.

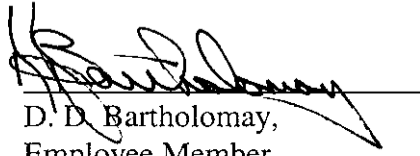


Martin H. Malin, Chairman



D. A. Ring,
Carrier Member

8.8-05



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, July 29, 2005