

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 75
)
) Award No. 55
)

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

Hearing Date: January 25, 2006

STATEMENT OF CLAIM:

1. The dismissal of Machine Operator Arnold Young for his alleged failure to provide on-track safety for himself and equipment in the Brimstone Yard November 3, 2004, was without just and sufficient cause, based on unproven charges and in violation of the Agreement (System File MW-04-31/1417162).
2. As a consequence of the violations referred to in Part (1) above, Machine Operator Arnold Young 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.

On November 9, 2004, Carrier notified Claimant to appear for an investigation on December 1, 2004. The notice alleged that Claimant violated Rules 1.6(1), 1.1 and 1.1.2 and Chief Engineers Bulletin Instructions 136.4.2, 136.4, 136.3.1 and 136.8.2, by failing to provide on-track safety for his gang resulting in a collision between a Brandt Truck and a WAT Co. Switcher engine. The hearing was held as scheduled. On December 21, 2004, Claimant was notified that he had been found guilty of the charge and dismissed from service.

The Organization has raised a number of alleged procedural deficiencies in the investigation. We have reviewed the record thoroughly. We find that none of the Organization's procedural objections individually or taken together provide a basis for setting aside the

discipline. Accordingly, we turn to the merits of the charges.

The record reflects that on November 3, 2004, Claimant was operating the Brandt Truck when the foreman cleared him off the main line and into Brimstone Yard. The truck was struck by a switch engine operated by an employee of WAT Co., a contractor. Claimant admitted that he made no contact with the yard and that he failed to make the track inaccessible. Carrier proved the charges by substantial evidence.

Carrier proved that Claimant committed serious safety violations. However, Claimant had 23 years of service and there is no evidence of any prior discipline. Considering all of the peculiar circumstances of this case, we find that the penalty of dismissal was excessive. Claimant shall be returned to service with seniority unimpaired but without compensation for time out of service.

AWARD

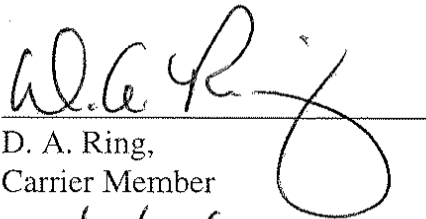
Claim sustained in accordance with the Findings.

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

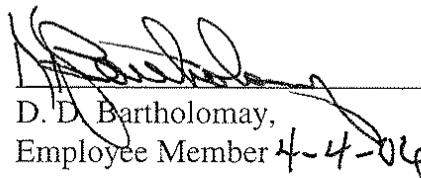


Martin H. Malin, Chairman



D. A. Ring,
Carrier Member

4-4-06



D. D. Bartholomay,
Employee Member 4-4-06

Dated at Chicago, Illinois, March 30, 2006