

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 69
)
) Award No. 60
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
B. W. Hanquist, Carrier Member

Hearing Date: September 14, 2006

STATEMENT OF CLAIM:

1. The discipline (seniority termination) of Mr. J. Keplar for alleged absence without authority from February 23, 2004 and continuing was arbitrary, capricious, on unproven charges and in violation of the Agreement (System File CEI00304R/M4-MOP0888).
2. As a consequence of the violation referred to in Part (1) above, Mr. J. Keplar shall now receive the remedy prescribed by the parties in Rule 21(f).

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 record reflects that February 23, 2004, Claimant walked off the job, saying that he was angry, and never returned. The Manager of Bridge Maintenance attempted to telephone Claimant several times between February 23 and February 27 but never received an answer. He tried again without success on March 1 and went to Claimant's house. Claimant was not home but the Manager left a note in Claimant's storm door. The Manager returned to Claimant's house on March 2. Claimant was not home but the note was gone.

As of March 23, 2004, Claimant still had not reported for work. The Manager sent Claimant a letter advising him that he had been absent for more than thirty days and could be treated as having resigned. The letter further instructed Claimant to show cause within seven days why Carrier should not terminate his employment. The Manager resent the letter on May 4, 2004. On May 7, 2004, Claimant called the Manager inquiring what to do. When the Manager asked Claimant why he had not responded previously, Claimant replied that he was angry. The Manager advised Claimant to produce any documentation that would provide cause for Claimant's failure to report for work, such as medical documentation. Claimant provided the Manager with a payment schedule from a chiropractor but provided no documentation of any medical condition or any other reason disabling him from working.

On May 24, 2004, Carrier notified Claimant to report for an investigation on June 14, 2004, "to determine whether you had just cause for absenting yourself from work from February 23, 2004, to the present . . . without proper authority." Claimant received the notice, as evidenced by the signed Postal Service return receipt. However, Claimant did not appear for the investigation and the hearing proceeded in absentia. On June 24, 2004, Carrier advised Claimant that after its review of the investigation record, "your record has been marked level five (5) in connection with your absenting yourself from your assignment from February 23, 2004 to the present without proper authority, in violation of Rule 14 . . ." UPGRADE Level 5 is dismissal from service.

The Organization contends that Claimant was denied a fair and impartial hearing because he was not given adequate notice of the charges and because the hearing was conducted in absentia. We do not agree. Rule 14 provides:

- (a) Employees who are continuously absent without authority from their position for a period of thirty (30) calendar days may be treated as having resigned and their names removed from the seniority roster.
- (b) Before an employee is considered as having resigned and his name removed from the roster, the employee will be notified at his last known address by Certified Mail - Return Receipt Requested that failure to return from service or show cause within seven (7) calendar days of receipt of the letter will be treated as a voluntary resignation and his name removed from all seniority rosters. A letter mailed to the last address of record with the Carrier will be considered delivered. A copy of such letter will be sent to the General Chairman.
- (c) If the employee responds to such letter within the time specified, the Carrier will have the option of allowing the employee to return to service for good cause shown or citing him for formal investigation under the provisions of Rule 21 (Discipline and Investigations) of this Collective Bargaining Agreement.
- (d) If the employee does not respond within the time specified, he will be considered as having resigned and his name removed from all seniority rosters.

The record clearly establishes that Carrier not only complied with Rule 14, it bent over backwards to show Claimant consideration. Carrier properly sent Claimant a Rule 14 notice on March 23, 2004. Claimant did not respond. Although Carrier could have terminated Claimant's employment at that point pursuant to Rule 14(d), it did not do so. Instead, it resent the Rule 14 notice. Claimant did respond but failed to provide any documentation of any cause to justify his absence from work. Indeed, Claimant told the Manager of Bridge Maintenance that he had not responded sooner because he was angry. Carrier notified Claimant to report for an investigation. The notice clearly advised Claimant that the investigation concerned his continued absence without authority since February 23, 2004. We don't know how the notice could have been any clearer. Nor is there any justification in the record for Claimant's failure to attend the hearing on June 14, 2004. Carrier acted appropriately in proceeding with the investigation in absentia.

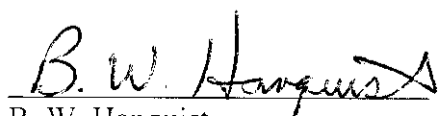
The record clearly establishes that Claimant was absent without authority from February 23, 2004 onward. It further clearly establishes that there was no cause for Claimant's absence. There is simply no basis for disturbing Claimant's termination.

AWARD

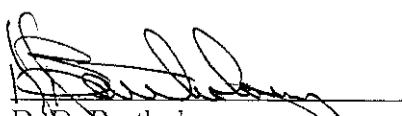
Claim denied.



Martin H. Malin, Chairman



B. W. Hanquist
Carrier Member



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, February 27, 2007