NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION - IBT RAIL CONFERENCE	)
	)
	) Case No. 93
and	)
	) Award No. 69
UNION PACIFIC RAILROAD COMPANY	)

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

Hearing Date: March 20, 2007

STATEMENT OF CLAIM:

1. The Level 5 UPGRADE discipline assessment (dismissal from service) to Mr. K. J. Dimery for an alleged violation of Union Pacific Rule 1.6(4) (Dishonesty) was not justified.

2. As a consequence of the violation referred to in Part (1) above, Claimant shall have the charge letter removed from all company records, the Railroad will compensate him for all loss of time, vacation rights, including the reinstatement of all seniority rights unimpaired and for all personal expenses to be reimbused back to him to attend the investigation.

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 April 21, 2006, Carrier instructed Claimant to report on May 1, 2006, for a formal investigation concerning charges that he was dishonest in reporting time worked in March 2006, in violation of Rule 1.6(4). The hearing was held as scheduled. On May 15, 2006, Carrier informed Claimant that he had been found guilty of the charges and dismissed from service.

The Organization hasraised a number of procedural objections to the hearing. We have reviewed them and determined that they lack merit and do not warrant setting aside the discipline. Only one of the objections merits further discussion.

The Organization contends that because the notice of investigation failed to specify the exact dates for which Claimant allegedly dishonestly reported his time, it violated Rule 21's requirement that Claimant "be apprised in writing of the precise nature of the charge(s) . . ." The notice only stated that the alleged dishonesty occurred in March 2006. However, the notice must be read in context. Claimant had already been interviewed concerning the time he reported for March 22 and 23, 2006. There is no question that Claimant realized that the notice concerned his reporting of time for March 22 and 23. Although it would have been better had Carrier specified those dates in the notice and, under other circumstances we might be receptive to an argument that a notice alleging dishonest reporting of time without specifying the dates might violate Rule 21, under the circumstances presented in the instant case, it is clear that the notice provided Claimant with sufficient information to prepare his defense. Accordingly, we turn to the substance of the charge.

The record reflects that Claimant reported three hours of overtime for March 22, even though he did not work any overtime that day. The record further reflects that Claimant reported ten hours of straight time and one-half hour of overtime for March 23, even though he did not work at all on that date. What is in dispute is whether Claimant made an honest mistake or whether his intent was dishonest.

When initially asked about the two dates, Claimant insisted that he had worked the hours he submitted and maintained that he had notes to that effect in his planner. After Claimant was removed from service, he called his manager and advised that he had made a mistake and that he had not worked on March 13 because his wife was sick that day. When the manager reminded Claimant that the date in question was March 23, Claimant responded that he meant the he had made a mistake with respect to March 23. At the hearing, Claimant testified that his eyesight was poor as he was waiting to receive a replacement pair of eyeglasses and that he had actually shorted himself 20 hours of pay. However, Claimant never explained on what date he worked the time he inaccurately claimed for March 23 or where the alleged shortage was. Moreover, Claimant never offered any explanation for his reporting three hours of overtime for March 22 that he did not work

Considering the voluminous record as a whole, we find that Carrier proved the charge by substantial evidence. Dishonesty is an extremely serious offense. We recognize that Claimant had almost nine years of service at the time of his dismissal, but Carrier is not obliged to maintain in its employ an employee who steals time. The penalty of dismissal was not arbitrary, capricious or excessive.

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AWARD

Claim denied.

Martin H. Malin, Chairman

B. W. Hanquist
Carrier Member

D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, May 31, 2007