

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 82
UNION PACIFIC RAILROAD COMPANY) Award No. 71
_____)

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

Hearing Date: March 20, 2007

STATEMENT OF CLAIM:

We are presenting a claim on behalf of Track man, Mr. M. L. Brown . . . [for] Fifty-five (55) hours at his respective straight time rate of pay because Employee was not allowed to work after being issued a Level 3, and not having investigation.

It is the Organization's position that the Carrier has violated the following but not limited to these articles and rules of the Current Agreement between the Union Pacific Railroad and B.M.W.E., S.P. Atlantic Federation respectively: Scope, Rule 1(a) Seniority, Rule 2(a) Seniority Rights, Rule 11 Seniority Rosters, Rule 21(a) Discipline and Investigations.

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 June 24, 2005, Claimant was allegedly absent without authority. On June 25, 2005, Claimant's supervisor issued Claimant a Notice of Proposed Discipline for violation of Rule 1.15. The Notice notified Claimant that the violation was an UPGRADE Level 1 offense but due to Claimant's prior discipline record, discipline was proposed at UPGRADE Level 3. The Notice further advised Claimant that he had fifteen days to request an investigation, waive formal

hearing or request a formal conference. Claimant failed to request an investigation or a formal conference during the fifteen day period. Consequently, Carrier imposed the UPGRADE Level 3 discipline and suspended Claimant from August 5 - 9, 2005.

Rule 21(a)(2) provides, in pertinent part:

When employees are offered discipline pursuant to paragraph (g) of this rule, such employees will either accept or reject the offer within fifteen (15) calendar days from the date of receipt of the letter of charges. Discipline will be considered accepted if formal rejection is not received within fifteen (15) calendar days from the date of receipt of Carrier's letter. . . .

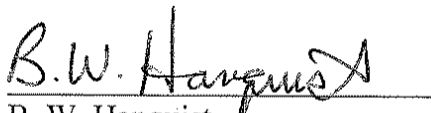
Claimant failed to reject the proposed discipline by requesting an investigation or a formal conference within fifteen days of the Notice of Discipline. Consequently, under Rule 21(a)(2), Claimant is considered as having accepted the proposed discipline.

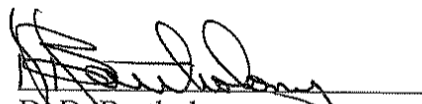
AWARD

Claim denied.



Martin H. Malin, Chairman


B. W. Hanquist
Carrier Member 7/17/07


D.D. Bartholomay
Employee Member 7-17-07

Dated at Chicago, Illinois, July 12, 2007