

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 94
UNION PACIFIC RAILROAD COMPANY) Award No. 75
_____)

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 1 UPGRADE discipline assessment (Letter of Reprimand) to Mr. H. K. Scott for an alleged violation of Union Pacific Rule 1.15 (Duty – Reporting or Absence) was not justified.
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall have the letter of reprimand removed from his record.

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 May 31, 2006, Claimant was notified to report for a formal investigation on June 9, 2006, concerning his allegedly being absent without authority on May 2, 2006. The hearing was held as scheduled. On June 29, 2006, Claimant was advised that he had been found guilty of the charge and had been assessed discipline at UPGRADE Level 1, a Letter of Reprimand.

The record reflects that Claimant was ill on May 2, 2006. The alleged violation of Rule 1.15 was premised on the contention that Claimant failed properly to call in and secure authority for his absence. The Gang Policy provided:

Always call your supervisor at least 1 hour before your starting time. When you are going to be absent or tardy. (Leave a return number). Leaving a message doesn't constitute

authorization to be absent or tardy.

Although there was conflicting evidence as to whether Claimant's starting time on May 2, 2006, was 8:00 a.m. or 6:00 a.m., the conflict is irrelevant to disposition of this claim. There is no conflict that at 5:01 a.m., Claimant sent a text message to his supervisor's cell phone advising the supervisor that Claimant was ill, would not be in to work that day and that Claimant had tried to call the supervisor's cell phone but the supervisor's voice mail box was full. The only means to contact the supervisor to request authority for an absence was to call his cell phone. The supervisor was on vacation on May 2 and did not answer his cell phone or check his voice mail. There is no evidence of any alternate method of securing authority for an absence. In other words, on May 2, 2006, it was impossible to secure authority for an absence.

Carrier may not discipline an employee for failure to comply with a rule or policy when Carrier's own officer has made compliance impossible. There is simply no basis for the discipline imposed.

AWARD

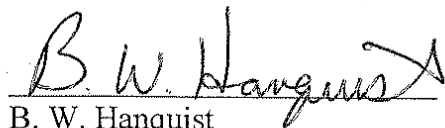
Claim sustained.

ORDER

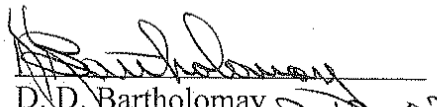
The Board having determined that an award favorable to Claimant be issued, Carrier is ordered to implement the award within thirty days from the date two members affix their signatures hereto



Martin H. Malin, Chairman



B. W. Hanquist
Carrier Member


7-17-07

D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, July 12, 2007