

**PUBLIC LAW BOARD NO. 6402**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES )  
and ) Case No. 119  
UNION PACIFIC RAILROAD COMPANY ) Award No. 98  
\_\_\_\_\_ )

Martin H. Malin, Chairman & Neutral Member  
T. W. Kreke, Employee Member  
B. W. Hanquist, Carrier Member

STATEMENT OF CLAIM:

1. The dismissal of B & B Carpenter Demorrice Baisey for alleged violation of Rule 1.5 and the Union Pacific Railroad Drug and Alcohol Policy in connection with the allegation that he allegedly tested positive for an illegal substance during a UPRR Reasonable Suspicion Test administered on February 28, 2007 is unjust, unwarranted and in violation of the Agreement (System File LLW-07-15/1472749 MPR).
2. As a consequence of the violation outlined above, Mr. Baisey shall now be reinstated to the service of the Carrier on his former position with seniority and all other rights restored unimpaired, compensated for all wage and benefit loss suffered by him since his removal from service and the alleged charge(s) be expunged from his record.

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 March 7, 2007, Claimant was notified to report for a formal investigation on April 2, 2007, concerning his allegedly testing positive for an illegal substance during a reasonable suspicion drug test on February 28, 2007. The notice advised Claimant that he would be allowed to waive discipline and agree to Carrier's One-Time Return to Service Agreement. The One-Time Return to Service Agreement was attached to the notice. The notice further advised:


You have three (3) calendar days from receipt of this letter to accept the waiver. Should you elect to reject the discipline as proposed be advised that the hearing into this matter will be held as scheduled and that the Carrier will not be bound by, or limited to, the proposed discipline, i.e., the measure of discipline which may be assessed as a result of the hearing will be based on the facts developed in the hearing and may be different (more or less) than the discipline originally proposed.

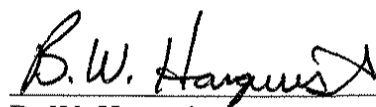
Claimant did not respond to the notice and proposed waiver. Claimant also did not appear for the hearing as scheduled on April 2, 2007. On April 16, 2007, Carrier notified Claimant that he was dismissed from service.

During handling on the property, the Organization based the claim on Carrier's failure to send a copy of the notice of investigation to the General Chairman of the Southern Pacific Atlantic Federation. Carrier responded that it sent the notice to a different General Chairman, and that the Organization had indicated that notice to any of the General Chairman on the Missouri Pacific Bargaining Committee was sufficient, as Carrier does not know to which Federation any particular employee belongs. During handling on the property, the Organization indicated that the Southern Pacific Atlantic Federation did receive a faxed copy of the notice on March 9, 2007, and that the First Vice Chairman discussed the matter with the Manager Bridge Maintenance. Thus, it is apparent that the Organization received notice of the investigation in plenty of time to prepare for the hearing and that the claim must be denied.

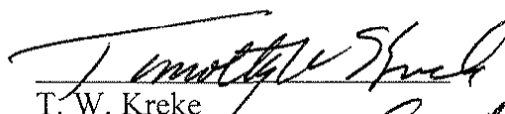
### AWARD

Claim denied.

  
Martin H. Malin, Chairman

  
B. W. Hanquist  
Carrier Member

Sept 17, 2008

  
T. W. Kreke  
Employee Member

Sept 17, 2008

Dated at Chicago, Illinois, August 31, 2008