

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7258

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 15
UNION PACIFIC RAILROAD COMPANY) Award No. 15
_____)

Richard K. Hanft, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: November 12, 2008

STATEMENT OF CLAIM:

1. The disqualification of System Curve Gang Foreman Jimmy A. Gonzales is without just cause (Carrier's File 1491444 SPW).
2. As a consequence of Part 1 above, we request that the disqualification in the class of system curve gang be immediately expunged from Mr. Gonzales' record and that he be compensated for net wages lost, straight time and overtime, since the date of his disqualification and continuing until he is returned to his former position of system curve gang foreman on Gang 8515. Payment shall be in addition to any compensation that he may have already received.

FINDINGS:

Public Law Board No. 7258 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.

Claimant was assigned to the position of System Curve Gang Foreman on August 23, 2007. On September 23, 2007, Claimant was advised by letter that he had failed to qualify as System Curve Foreman effective immediately. The Organization filed a claim on Claimant's behalf on November 9, 2007. That claim was denied by Carrier on January 2, 2008 and appeal was filed on February 13, 2008. Carrier denied the Organization's appeal by letter dated April 11, 2008 and the claim was further discussed in conference on May 2, 2008 without resolution of the dispute. In the midst of all of the above, on January 22, 2008, Claimant was issued a Rule 48 (k) letter advising that he had been absent without authority for a period of five (5) consecutive

days. A Leniency Reinstatement Agreement was executed on October 17, 2008 between Carrier, Claimant and his General Chairman.

As a part of the Leniency Reinstatement Agreement, Claimant and his General Chairman agreed that Claimant was

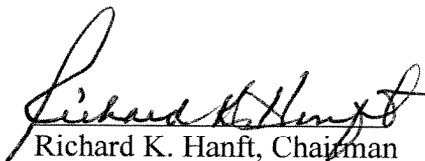
“...being returned to service on a probationary basis with seniority rights and vacation rights restored unimpaired but without compensation for time lost while out of service. Any and all claims that may be filed on” Claimant’s “behalf will be withdrawn and dismissed in their entirety.”

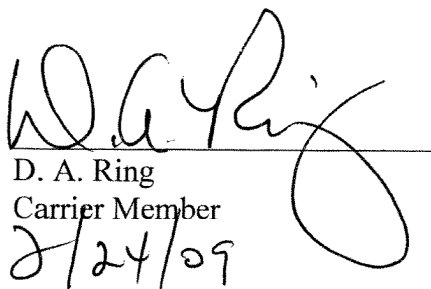
Carrier asserts that pursuant to the above-stated provision in the Leniency Reinstatement Agreement, Claimant is barred from pursuing the claim concerning his failure to qualify for the System Curve Gang Foreman position.

We must agree with the Carrier’s contention. Claimant and his representative voluntarily entered into an agreement that broadly absolved the Carrier of all claims on Claimant’s behalf and any such claim, in accordance with the Agreement, must be dismissed. Absent language specifically reserving the right to pursue pending claims, which we do not find, the Claimant must live up to his end of the bargain that he made.

AWARD

Claim dismissed.


Richard K. Hanft, Chairman


D. A. Ring
Carrier Member
2/24/09


T. W. Kreke
Employee Member

Dated at Chicago, Illinois, January 31, 2009