

# PUBLIC LAW BOARD NO. 6953

AWARD NO. 8

CASE NO. 8

PARTIES TO  
THE DISPUTE:

UNITED TRANSPORTATION UNION

VS.

THE UNION PACIFIC RAILROAD COMPANY

ARBITRATOR: John L. Easley

DECISION: Claim Sustained

DATE: July 15, 2006

STATEMENT OF CLAIM:

Claim of Switchman Robert E. Randle for the reinstatement to the services of the Union Pacific Railroad Company (former C. & N. W. Railway Company), with vacation and seniority rights unimpaired, the payment of vacation allowance for time wrongfully discharged, and the scheduling of a vacation period consistent with seniority ranking, in addition to the payment of any and all health and welfare benefits until reinstated, including reimbursement for any medical payments made while discharged, the payment of all Railroad Retirement taxes based on all lost and realized earnings, and reimbursement for any expenses related to the pursuit of alternative employment, the removal of discipline from the Claimant's record and that he be compensated for any and all lost time with compound interest at 1.5 percent monthly, including compensation for time spent attending an investigation held on May 18, 2005, and June 1, 2005, when charged with an alleged responsibility "in connection with your alleged violation of the Union Pacific Attendance Policy effective January 15, 2004 as the result of your alleged failure to protect employment by excessively absenting yourself from service.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that the Board is duly constituted by the agreement of both parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Claimant was advised by letter dated April 6, 2005 to attend a formal investigation April 13, 2005. The notice reads in part:

“The purpose of this investigation is to develop the facts and determine responsibility, if any, in connection with your alleged violation of the Union Pacific Attendance Policy effective January 15, 2004 as a result of your alleged failure to protect employment by excessively absenting yourself from service.

This investigation will be conducted in conformity with the (BLE/UTU) Discipline Agreement, and you are entitled to representation and witnesses as provided for in that Agreement.

The proposed violation under the Behavior Modification Policy is Final or under the Union Pacific Attendance Policy a “third offense” #3-- Chicago Superintendent Bulletin No. 41 which will result in permanent dismissal.”

The hearing was postponed until May 18, 2005, started and then recessed until June 1, 2005. The primary witness for the Carrier, Senior Manager of Terminal Operations S. Gomez testified at length that in his view the Claimant was in violation of the TE&Y Attendance Policy dated January 15, 2004 and Chicago Superintendent Bulletin No. 41 effective January 1, 2005. Both of these documents contain identical wording and read as follows:

“IT IS EXPECTED THAT UNION PACIFIC EMPLOYEES WILL PROTECT THEIR JOB ASSIGNMENTS ON A FULL-TIME BASIS. IN CASES WHERE AN EMPLOYEE DOES NOT WORK FULL TIME, THE FOLLOWING POLICY IS APPLICABLE:

1. EMPLOYEES WHO DO NOT WORK FULL TIME WILL BE IDENTIFIED. THE IDENTIFIED EMPLOYEE’S WORK RECORD WILL BE EXAMINED TO ENSURE THE INFORMATION IS ACCURATE. DURING THIS PROCESS, EVERY EFFORT WILL MADE TO IDENTIFY THOSE EMPLOYEES WHO HAVE LEGITIMATE REASONS FOR THEIR ABSENCES. IF NECESSARY, THE SUPERVISOR WILL CONTACT THE EMPLOYEE TO OBTAIN ADDITIONAL INFORMATION AND/OR CLARIFY THE AVAILABLE INFORMATION. IF THE EMPLOYEE’S ATTENDANCE RECORD WARRANTS, AN INVESTIGATION WILL BE HELD. IF APPROPRIATE, DISCIPLINE WILL BE ISSUED BASED ON THE RESULTS OF THE INVESTIGATION.

2. IDENTIFICATION WILL INCLUDE EMPLOYEES WITH:
  - A. FREQUENT OR PATTERN OF WEEKEND LAYOFFS.
  - B. FREQUENT OR PATTERN OF HOLIDAY LAYOFFS.
  - C. FREQUENT PERSONAL LAYOFFS.
  - D. FREQUENT SICK/SICKNESS IN FAMILY LAYOFFS WITHOUT MEDICAL DOCUMENTATION.
  - E. LOWER AVAILABILITY DAYS WHEN COMPARED TO PEERS.
3. THE EMPLOYEE'S WORK RECORD WILL CONTINUE TO BE MONITORED. IF THE EMPLOYEE STILL FAILS TO WORK FULL TIME, A SECOND AND, IF NEEDED, THIRD INVESTIGATION WILL BE HELD. IF APPROPRIATE, DISCIPLINE WILL BE ISSUED BASED ON THE RESULTS OF THE INVESTIGATIONS.
4. DISCIPLINE ASSESSED FOR VIOLATIONS OF THIS POLICY WILL BE INDEPENDENT OF DISCIPLINE "LEVELS" COMPUTED UNDER UPGRADE.
5. EMPLOYEES WILL BE INSTRUCTED TO MARK UP FOR SERVICE IMMEDIATELY AND TO WORK FULL TIME FOLLOWING THE FIRST AND SECOND INVESTIGATIONS.
6. A THIRD ABSENTEEISM OFFENSE WILL RESULT IN DISMISSAL."

MTO Gomez went over a 91 day work history of the Claimant, highlighting the times that he was not available for service. They include one trip missed for family illness, five days off personal, one trip laid off after call and eight days that he laid off account personal illness.

The Claimant testified that in each case of being off sick he had gone to the Humana Health Care center for help with his type II diabetes and produced documentation to verify the layoff. In addition he spoke of two previous meetings with Carrier Managers concerning his illness. He further states that in the past he had advised the Carrier being hospitalized three times for this illness, two weeks in 2002, three weeks in September 2004 and four days in December 2004. When questioned by Conducting Officer Brian Urban concerning the previous meetings, he was asked specifically did you at any time waive your right to any investigation? The Claimant responded that he did not.

OPINION OF THE BOARD:

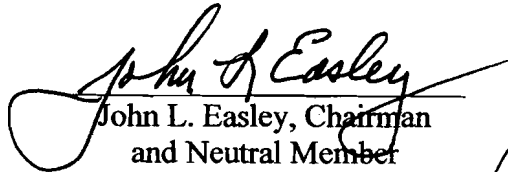
The previously quoted Policy states that an employee's work record will be monitored. A second and if needed a third investigation will be held. The only record in the transcript of investigation of any meeting with the Claimant over his absences is from the Claimant. The Carrier produced no record of any previous meetings concerning his work record. The Policy states that frequent lay off for sickness without documentation is a violation, however, the Claimant provided documentation that has gone unchallenged. The Board holds that the Carrier has failed in their burden to show that the Claimant violated their Attendance Policy.

AWARD:

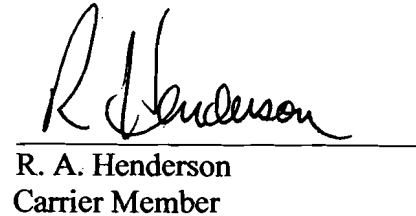
Claim Sustained.

EXECUTION ORDER:

The Carrier is directed to comply with this Award within thirty days from the above date and to calculate monetary remuneration in accord with UP/UTU (former CNW) Agreement dated October 31, 2003.

  
John L. Easley, Chairman  
and Neutral Member

  
Michael J. Reedy  
Organization Member

  
R. A. Henderson  
Carrier Member