

In the Matter of Arbitration between
UNION PACIFIC RAILROAD COMPANY
AND
THE UNITED TRANSPORTATION UNION
SPECIAL BOARD OF ADJUSTMENT
BY AGREEMENT DATED AUGUST 10, 2005
CASE 2
AWARD 2

CARRIER'S QUESTION AT ISSUE:

“Was it proper for the Carrier to deny guarantee payments to Trainmen K.L. Brady when he strategically used layoff and compensated leave privileges to receive extra board benefits contrary to the availability principle contemplated in the extra board/supplemental extra board guarantee?”

ORGANIZATION'S QUESTION AT ISSUE:

“Was it proper for the Carrier to deny guarantee payments to Trainman K.L. Brady due to the method compensated leave privileges were taken while on the guaranteed extra board?”

Statement of Facts:

This is the second of two cases involving the relationship between compensated off days such as personal leave days and vacations and Guaranteed Extra Boards and Supplemental Extra Boards. The positions and arguments raised by the parties in Case Number 1 are the same arguments raised in this case. By reference thereto those arguments are incorporated in this decision.

During the month of January 2005, claimant K.L. Brady was assigned to the Combination Road/Yard Extra Board (TP230 XK 47) at Arlington, Texas with the exception of January 18 and 19 when he held a regular brakeman position on LBH09.

In the first half of January the claimant did not perform any service. He took three personal leave days on January 5, 10 and 15. For the entire pay period the claimant was paid for the three personal leave days and one day of holiday pay for total earnings of \$688.08. The claimant was assigned to the extra board on January 16 and 17 and from January 24 through January 31, 2005. The claimant worked from the extra board on January 25 and work his regular assignment on January 18 and 19. The claimant laid off sick on January 17, used two personal leave days on January 27 and 28 and laid off on January 31 to take a rules examination.

The Carrier did not pay the claimant any extra board guarantee for January. The Organization protested the Carrier's decision not to pay the claimant's extra board guarantee. The Organization stated that the claimant was marked up and available during the time period or took personal leave that was authorized and approved by Crew Management System. The Organization further argued that CMS retained the right to deny the claimant personal leave days under manpower provisions. They concluded that the Carrier declined payment of guaranteed benefits after they authorized personal leave days for the claimant.

The parties have had several discussions over this issue. The Carrier maintained that the claimant intentionally and strategically evaded his work obligation during the month of January. By doing so, the Carrier stated that the claimant did not keep with the intent of the Extra Board guarantee provisions and it was justified in its denial of the claimant's extra board guarantee. The Carrier paid the guarantee in question upon special

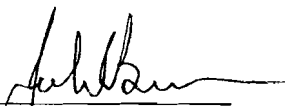
request from UTU Vice President Futhey. The payment was made with the understanding that the basic issue in dispute would be subject to arbitration and that the payment did not prejudice the Carrier's position before this Board.

Decision:

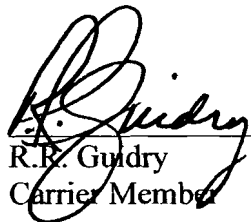
This Board has already held in Case 1 that the Carrier's approval or authority does not excuse an employee's behavior when he fails to protect the employment requirements of his job. After examining the evidence in this case the Board finds that the claimant's actions were sharp practice. The call office records and AVR records showed that the claimant used personal leave days to avoid work. The record further showed that the claimant cancelled his request for personal leave day on January 8 when it was obvious that he would not be called for service. The evidence presented by the Carrier was sufficient for a reasonable man to conclude that the claimant was attempting to avoid his responsibility to protect vacancies from the extra board.

Further for the reasons stated in Award No.1 the Board finds that the claimant's actions were sharpshooting the intent of the agreements. Also, as stated in Award No. 1 the Board finds that the parties did not intend the guarantee rules to be manipulated to provide a windfall to employees assigned to such boards. Therefore, the Board finds as it did in Award No.1 that it was proper for the Carrier to deny guarantee payments to the claimant based on the facts and circumstances present in this case. However, the Board notes that Side Letter 3, dated September 5, 1996 provided that the parties will meet and

address problems if the changes in the Personal leave Agreement provided a mechanism for employees to engage in sharp practices. The Board therefore agrees with the advice given in Decision No. 5503 of Special Adjustment Board No. 18 that the parties to this dispute sit down and negotiate guidelines to prevent further sharpshooting.



John R. Binau
Neutral Member



R.R. Guldry
Carrier Member

M.B. Futhey, Jr
Organization Member