

AWARD NO. 131
NMB CASE NO. 131
UNION CASE 98031
COMPANY CASE 1116391

PUBLIC LAW BOARD NO. 4450

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY
(Western Region)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

Appealing the Upgrade Level 2 Discipline assessed to Engineer A. F. Jimerson and request the expungement of discipline assessed and pay for any and all time lost with all seniority and vacation rights restored unimpaired. Action taken as a result of formal investigation held on January 28, 1998.

OPINION OF BOARD: On January 21, 1998, Carrier issued letter of Notice of Investigation to Claimant, instructing him to appear for an investigation and hearing on January 28, 1998, in Los Angeles, to "develop the facts and place individual responsibility, if any, in connection with the following charge"(Emphasis added):

While assigned as Engineer for the Union Pacific Railroad, at Los Angeles, California, you allegedly failed to comply with instructions on May 21, 1997, regarding your absenteeism and abuse of the layoff status, indicating possible violation of Rule 1.13 as contained in the General Code of Operating Rules, effective April 10, 1994.

Examination of the transcript of the formal investigation shows unrefuted testimony from Claimant that birth of a baby in October 1997, two (2) family deaths in November 1997 and another family death in December 1997 accounted for a number of the layoffs. Moreover, the record also shows that Carrier "counted" as absences some days when Claimant was actually protecting the Extra Board but was not called and that all of his layoffs were processed in accordance with the mandates of LE 3335, dated May 12, 1965, which states:

"The following shall be added to paragraph 4 of BLE Rule 151 of the effective Schedule Agreement:

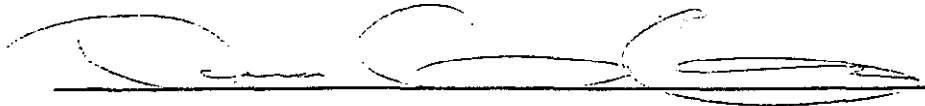
A lay off of one day, to and including fifteen (15) days must be approved by the authorized representative of the Carrier. The Carrier representative handling the crew board under which the engineer is working will be an authorized representative for this purpose. A leave of absence over fifteen (15) days to and including ninety (90) must be approved by the Superintendent.

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This Board concludes that carrier failed to prove its charge that Claimant violated Rule 1.13 of the General Code of Operating Rules, Third Edition effective April 10, 1994, - Reporting and Complying with Instructions: *Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.*

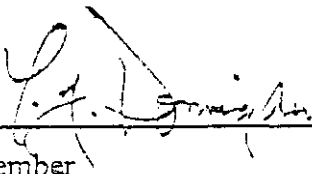
AWARD

- 1) Claim sustained.
- 2) Carrier shall implement this award within thirty (30) days of its execution by a majority of the Board.

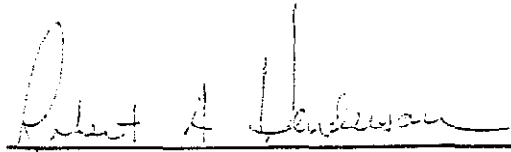


Dana Edward Eischen, Chairman

Dated at Spencer, New York on March 9, 2002



Union Member



Company Member