

AWARD NO. 133
NMB CASE NO. 133
UNION CASE 99029
COMPANY CASE 1183653

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 L. L. Johnson 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 May 17, 1999.

OPINION OF BOARD: In this case, Engineer L. L. Johnson ("Claimant") and the Organization appeal a Level 2 Upgrade disciplinary action assessed by Superintendent K. H. Hunt, following a May 17, 1999 investigation into charges filed on May 11, 1999, by Manager of Operating Practices (MOP) P. T. Varland that Claimant had violated Rules 1.13 and 1.15 of the General Code of Operating Rules adopted and modified by Union Pacific Railroad, effective April 10, 1994. Superintendent Hunt's May 27, 1999 letter assessing the discipline reads, in pertinent part as follows

While you were employed as Engineer on the XE-30 (OX486) at M.P. 290 (La Grande) Subdivisions La Grande (837) and Huntington (810), you failed to comply with instructions directing you to minimize absences from work and meet the employment[sic] requirements of your assignment issued in conference on February 10, 1999, confirmed by letter dated February 26, 1999. Your continuing failure to protect employment by excessively absenting yourself from service, as noted on your work history and calendar between February 10, 1999, and May 9, 1999, while employed as Engineer with the Union Pacific Railroad, is in violation of Rules 1.13 and 1.15 of the General Code of Operating Rules adopted and modified by Union Pacific Railroad, effective April 10, 1994. . .

The Rules which Superintendent Hunt found Claimant guilty of violating read as follows:

General Code of Operating Rules, Third Edition effective April 10, 1994, Rule 1.13 – 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.*

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General Code of Operating Rules, Third Edition effective April 10, 1994, Rule 1.15 – Duty Report or Absence: *Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority.*

Contrary to the conclusion reached by Superintendent Hunt, a careful review of the transcribed record of investigation reveals not a scintilla of evidence that Claimant violated Rule 1.15. The claimed violation of Rule 1.13 is, in essence, a charge of insubordination. It is elemental that among the predicates for finding an employee guilty of such a violation is clear articulation and communication by the supervisor to the employee of a readily understandable order, instruction, ~~directive or standard of performance which the employee must comply with or fulfill, e.g., the~~ specific instruction issued to the employee in the case decided as Award No. 129 of this Board.

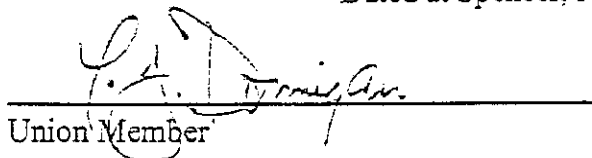
The record in this case shows that a letter addressed to Claimant by Superintendent Hunt under date of February 26, 1999, purporting to summarize supervisory instructions issued by MOP Varland on February 10, 1999, was never received or read by Claimant. So far as the record shows, the only instruction or performance standard communicated to Claimant by his supervisor in February 10, 1999 was a vague admonition to "improve his attendance". As the transcribed testimony amply demonstrates, even the supervisor was unsure about what he actually was telling Claimant to do and what standard Claimant would be required to meet to avoid disciplinary charges. In the facts of this record, we must sustain the claim.

AWARD

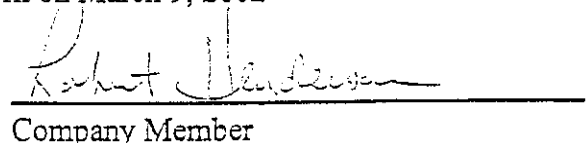
- 1) Claim sustained.
- 2) Carrier shall implement this award within thirty (30) days of its execution by a majority of the Board.



Dana Edward Eischen, Chairman
Dated at Spencer, New York on March 9, 2002



Union Member



Company Member