

AWARD NO. 146
NMB CASE NO. 146
UNION CASE NO. 20140
COMPANY CASE NO. 1274877

PUBLIC LAW BOARD NO. 4450

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY
(Western Region)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

Appeal the Upgrade Level 2 Discipline assessed to Engineer R. N. Surgeon and request the removal of discipline assessed and pay for any and all time lost with all seniority, vacation and other rights restored unimpaired.

OPINION OF BOARD: Engineer R. N. Surgeon ("Claimant") was assigned Yard Job YDP67-30 at Carrier's Albina Yard on June 30, 2001. The record establishes that the batteries and/or the starter on UP1301 apparently were defective and that starting that locomotive engine had been very difficult. The next assignment to which those locomotives were assigned was the Yard Job YDP32, which reported for duty at 11:45 p.m. When Claimant tied up at approximately 10:15 p.m. Pacific Time, at the east end of Track No. 16, he tied down the brakes and isolated the power but left the engines running on Locomotives UP1301 and UP1304. The record also shows that Claimant made several attempts to inform the Albina Tower of the situation by radio, but received no response.

Between 10:15 p.m. and 11:45 p.m., Manager of Operating Practices (MOP) M. W. Patterson noticed that the two locomotives were running and there was no one around. He boarded the locomotives and noted they were properly tied down but found no tag explaining why the engines

AWARD NO. 146
NMB CASE NO. 146
UNION CASE NO. 20140
COMPANY CASE NO. 1274877

had been left running. The MOP also left the engines running and departed the yard.

MOP Patterson then issued the following Notice of Charges against Claimant, under date of July 2, 2001:

Please report to the Conference Room, UPRR offices, 1619 N River Street, Portland, Oregon at 6:00 p.m., P.T. on Thursday, July 5, 2001, for investigation and hearing to develop the facts and determine your responsibility, if any, concerning following alleged charges: While employed as Engineer on the YPD67-30 at approximately 10:15 p.m., P.T., on June 30, 2001, near MP 2.9, Albina Yard, Portland Subdivision #830, you allegedly failed to shut down UP-1301 and UP-1304 at the east end of Track No. 16. This alleged action indicates possible violation of Rule 31.1.7 of the Union Pacific Railroad Air Brake and Train Handling Rules, and Union Pacific Railroad Portland Superintendent Bulletin No. 95 effective May 1, 2001.

The formal investigation was adjourned at the request of the Organization and rescheduled to be held on July 12, 2001.

In the meantime, however, MOP Patterson unilaterally removed Claimant from service, effective July 5, 2001. Despite timely objections by the Organization that this suspension pending investigation was unwarranted, prejudicial and violative of Claimant's rights under the System Agreement-Discipline Rule, Claimant remained suspended without pay through and following the investigation. By letter of July 20, 2001 General Superintendent Hunt notified Claimant that he was found guilty of the Level 2 offenses with which he had been charged but that due to his previously existing Level 4 status (which was then under appeal to arbitration), the instant Level 2 discipline was upgraded to a Level 5 and he was dismissed from service, effective July 20, 2001. [It is noted that the Level 1 disciplinary action which had upgraded Claimant's pre-existing Level 3 disciplinary status to Level 4 status, was reversed by this Board in Award No. 145].

The disciplinary action in the instant case also must be rescinded. MOP Patterson's suspension of Claimant for a charged Level 2 offense (leaving the engines running without tagging) was a fatal violation of Section 2 of the System Agreement-Discipline Rule. See PLB 2577-9.

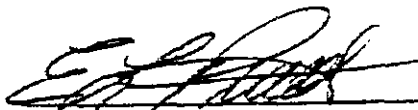
AWARD NO. 146
NMB CASE NO. 146
UNION CASE NO. 20140
COMPANY CASE NO. 1274877

AWARD

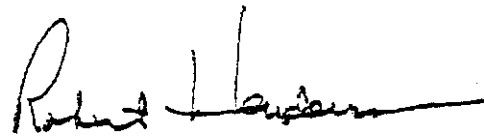
- 1) Claim sustained.
- 2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.



Dana Edward Eischen, Chairman



Union Member



Company Member