

AWARD NO. 147
NMB CASE NO. 147
UNION CASE NO. 20149
COMPANY CASE NO. 1281108

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 5 discipline assessed to Engineer R. D. Hoverson and request the removal of discipline assessed and pay for any and all time lost with all seniority, vacation, and all other rights restored unimpaired.

OPINION OF BOARD:

As a result of an investigation conducted on September 14, 2001, Claimant was assessed a Level 2 discipline for alleged violations of various Rules in connection with an "efficiency test" on September 8, 2001. Because he was already at level 4, the discipline was "upgraded" to Level 5 and Claimant was notified of his dismissal from service. During subsequent appeals, however, Carrier offered and Claimant accepted a reinstatement without prejudice to progression of the instant claim for make-whole monetary damages in arbitration before this Board.

It is not disputed that Claimant was called by a Union Pacific Railroad crew dispatcher for service on an OBAGR train, on September 13, 2001, at 1700 hours. At that time, the Crew Dispatcher then read him a "Notice of Investigation", which had been mailed from Portland, Oregon on September 12, 2001, instructing him to be at the formal hearing and investigation the next

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morning at 9:00 a.m. on September 14, 2001.

Claimant laid off and attended the investigation, and Claimant and his BLE Representative were handed a copy of the Notice of Discipline at 9:40 a.m. on September 14, 2001, after the Investigation had commenced. The Hearing Officer proceeded over objections by the Organization that service of the Notice of Discipline was fatally defective. Carrier thereafter found Claimant guilty as charged of Rules violations while working on a familiarization trip as Engineer between Nampa, Idaho and La Grande, Oregon, on Train IG2SE-06, with crew members R. D. Payant, working as Engineer Pilot, and Conductor Alan Ashley in an efficiency test near Milepost 298.9 near Union Junction, Oregon.

The System Agreement - Discipline Rule, Section 3 plainly and unambiguously requires timely, specific written, as follows:


NOTICE: 3. Within 10 days of the time the appropriate company Officer knew or should have known of an alleged offense, the engineer will be given written notice of the specific charges against him or her. The notice will state the time and place of the investigation and will be furnished sufficiently in advance to allow the engineer the opportunity to arrange for representation by a BLE representative(s) (the BLE Local Chairman or other elected BLE Officers) and witnesses. The notice will propose discipline to be assessed if investigation is waived and designate a carrier officer who may be contacted for the purpose of arranging for an informal conference on the matter. A copy of the notice will be furnished to the BLE Local Chairman.

The proven failure to comply with this requirement, which deprived Claimant and the Organization of contractual due process rights guaranteed by the System Agreement - Discipline Rule, was unmitigated and ultimately fatal to Carrier's its assessment of discipline in this case. See PLB 4450, Award 14.

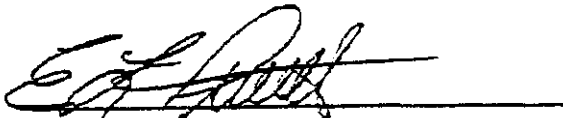
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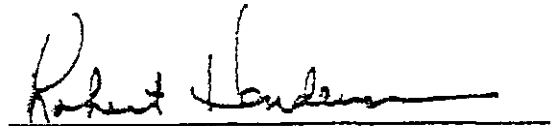
- 1) Claim sustained.
- 2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.



Dana Edward Eischen, Chairman



Union Member



Company Member