

PUBLIC LAW BOARD NO. 4450

AWARD NO. 93
NMB CASE NO. 93
UNION CASE NO. 02095C
COMPANY CASE NO. 9501107

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY
(Western Region)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Appealing the UPGRADE Level 4 Discipline of Engineer R. M. Spears and request the expungement of discipline assessed and pay for all lost time with all seniority and vacation rights restored unimpaired. Action taken as a result of investigation held October 25, 1994

OPINION OF BOARD: Based upon an incident of passing a stop signal, which occurred on October 17, 1994, Carrier cited Engineer R. M. Spears for alleged Rules violations and proposed Level 4 disciplinary action. There is some dispute about the propriety of the Notice of Charge not including the Form 3 but because this case also suffers from other basic and fatal procedural defects, we will not comment further on the Form 3 aspect of the case.

The Parties mutually consented to postponement of the hearing until 3:00 PM of October 25, 1994, and the hearing was held and completed that day. However, Hearing Officer J. S. Maughan did not issue the following Notice of Discipline until November 18, 1994, well beyond the ten (10) days required by the System Discipline Rule:

"AFTER REVIEW OF THE EVIDENCE ADDUCED AT THE HEARING HELD IN SALT LAKE CITY, UTAH AT 15:00 P.M. TUESDAY OCTOBER 25, 1994, I FIND YOU RESPONSIBLE FOR FAILURE TO COMPLY WITH RESTRICTED SPEED AFTER PASSING STOP SIGNAL DISPLAYING STOP AT WEST MIDVALE, UTAH ON THE SOUTHERN PACIFIC MAIN LINE. THIS RESULTED IN YOUR TRAIN RUNNING THROUGH AND DAMAGING THE WEST CROSSOVER SWITCH NOT PROPERLY LINED NEAR MILE POST 735.9 ON SUBDIVISION 6.

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THIS OCCURRED AT APPROXIMATELY 23:00 ON MONDAY OCTOBER 17, 1994 WHILE YOU WERE PERFORMING SERVICE AS ENGINEER ON THE CSRVY-17.

THIS IS IN VIOLATION OF RULES 6.27 AND 6.31 AS CONTAINED IN THE GENERAL CODE OF OPERATING RULES EFFECTIVE APRIL 10, 1994. YOU ARE THEREFORE ASSESSED A LEVEL 4 IN THE UPGRADE POLICY WHICH WAS EVIDENCED ON THE PREVIOUSLY SENT UPGRADE FORM.

A LEVEL 4 DISCIPLINE ADDED TO THE LEVEL 2 DISCIPLINE YOU HAVE PREVIOUSLY RECEIVED RESULTS IN A LEVEL 4 DISCIPLINE WHICH IS A 30 DAY SUSPENSION WITHOUT COMPENSATION WHICH COMMENCED ON OCTOBER 19, 1994...."

BLE Local Chairman Ellefsen made timely appeal, by letter to Superintendent Bearden dated December 26, 1994. Among other items, the Local Chairman took exception to the timeliness of the Notice of Discipline not being issued in accordance with BLE South Central District Rule 136:

"1-Engineer Spears did not receive the notification of discipline with the 30 day suspension within the proper time frame of 10 days as required by the agreement between the Union Pacific Railroad and the Brotherhood of Locomotive Engineers of April 15, 1972 as rule 136 requires. He received a letter dated November 18, 1994 from M.T.O. Jeff Maughan explaining he was being assessed a level #4 with a 30 day suspension which was 24 days after the hearings, and which he received on or about November 24, 1994 which was 30 days after the hearing. I attach a copy of the Salt Lake Extra Board for November 19, 1994 which shows Mr. Spears status as being I.P. or Investigation Pending with a note to the side that he could mark up on 11/18 at 0001 a.m. It was ironic the computer shows he can mark up, and at this time engineer Spears has no realization as to what discipline he has been assessed in the form of a notification from the railroad as required by agreement.

Carrier's Notice of Discipline dated November 18, 1994 and received by Claimant almost a week later clearly was issued well beyond the ten-day limitation provided for in BLE Rule 136(h), reading in pertinent part: "*(h) Decision. Decision will be rendered within ten days from the date the hearing is concluded...*" (emphasis added). The Organization carried its burden of persuasion that in this case, Carrier failed to issue its decision as provided by BLE Rule 136(h) supra. Moreover, the attempt to use the Notice of Discipline dated November 18, 1994 as a means of "clarifying" the previously side-tracked Form 3 certainly did not adhere to the spirit and intent of

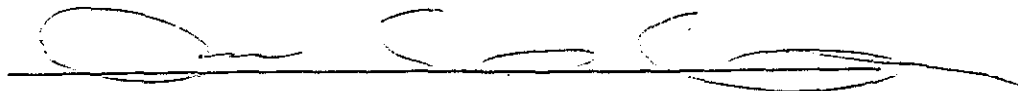
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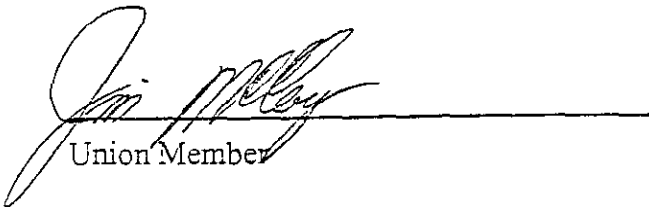
Upgrade Discipline Policy or BLE Rule 136(h). Carrier management is responsible for procedural propriety in its administration of the UPGRADE Policy. Serious mishandling by local management caused fatal procedural gaffs which require voiding of the disciplinary action taken against Engineer Spears in this case.

AWARD

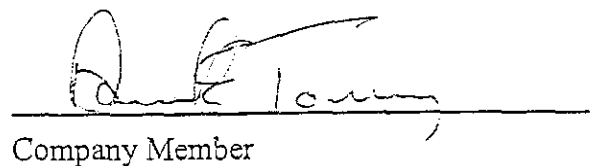
- 1) Claim sustained.
- 2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.



Dana Edward Eischen, Chairman
Dated at Spencer, New York on May 8, 1999



Union Member



Company Member