

**PUBLIC LAW BOARD 5137
AWARD NO. 88**

Parties to Dispute: **Union Pacific Railroad Company**
 (formerly Chicago & North Western Railway Co.)
 and
 United Transportation Union

Statement of Claim: **Claim of Conductor R.L. Richter for five (5) weeks vacation compensation**

 for the year 2000, January 17 through February 20, 2000, as per Award

 3230 of Special Board of Adjustment 235.

Findings: **The original claim of Conductor R.L. Richter, a Midwest Seniority District**

 Clinton, Iowa, conductor was adjudicated by SBA 235 in Award 3230. That

 Award reinstated Mr. Richter for time lost, except for five (5) days with seniority

 and vacation rights unimpaired. The Claimant returned to service September 8,

 1999. He was scheduled for vacation January 17, 2000. Crew Management

 Services (CMS) approved and then disapproved his posted vacation. The

 Carrier's Timekeeping Department relied on Brotherhood of Railroad Trainment

 Operating Agreement BRT-58-E as the authoritative precedent and contended that

 BRT -58-E stands for the proposition that Employees removed from service and

 subsequently reinstated with back pay have not rendered service during the

 dismissal period for the purpose of qualifying for vacation under section 1(d).

A review of the text and context of BRT-58-E indicates that BRT-58-E arose when an employee who had claimed permanent injury secured a monetary settlement and was thereafter estopped from returning to work.

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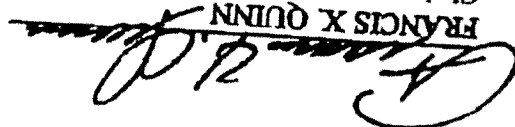
The instant case is easily distinguishable. In Award 3230 SBA 235 pointed out that the Claimant had been removed from service unjustly and that he was reinstated with all rights unimpaired and that he was compensated for any and all time lost. Compensation includes vacation. If justice was violated and the neutral restored vacation rights (as he did), it makes no sense to argue that Claimant does not receive his vacation. The scales of justice would not be restored to their fair, balanced designated equilibrium. Award 1599 of SBA 235 addressed this same issue and Award 2360 of SBA 235 affirmed the organization's position.

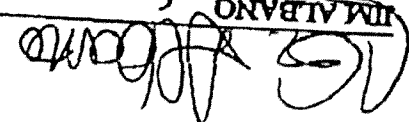
The record also indicates that the former Chicago and North Western Railway (CNW) followed the practice outlined in Award 2360 of PLB 235. In this case the Timekeeping Department at the UP paid the Claimant's lost earnings but relied on a misapplication of BRT-58-B in depriving Claimant of the vacation he would have earned had he not unjustly been held out of service. The normal make-whole remedy entitles the Claimant to be placed in the same position the Claimant would have occupied had the improper discharge not occurred. See Award 23 of PLB 4515 and PLB 4083 Award 10.


The intent and meaning of Award 3230 of Special Board of Adjustment 235 leaves little doubt about the intention and meaning of the Referee. It was the finding of that Board that Claimant Richter was returned to active service with all seniority and other rights restored and this includes the vacation he was due and would have earned had he not been improperly held out of service.

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Award:

Claim sustained


FRANCIS X. QUINN
Chair


JIM ALBANO
Carrier Member
Concurrence and Dissent
Attended

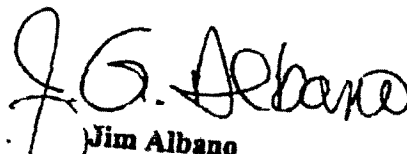

JOHN BABLER
Organization Member

Date October 25, 2000
Chicago, Illinois

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CARRIER'S CONCURRENCE AND DISSENT TO PLB 5137, AWARD 88

The Carrier *concurs* with so much of Award No. 88 as is predicated upon historical practice, albeit a historical practice itself predicated upon an erroneous application of Arbitrator Cluster's Interpretation of SBA 235, Award No. 2360. The Carrier respectfully *dissents* to the remainder of Award 88.


Jim Albano
Carrier Member