

PUBLIC LAW BOARD NO. 5271

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY)	
(WESTERN REGION))	
)	NMB CASE NO. 2
VS)	AWARD NO. 2
)	
BROTHERHOOD OF LOCOMOTIVE ENGINEERS))	

STATEMENT OF CLAIM:

Request expungement of a 61-day suspension assessed to Engineer D. G. Walls and pay for all time lost.

FINDINGS AND OPINION

The Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved.

The facts in this case reveal that claimant, as an Engineer working off the extra board, was properly called at 7:00 a.m. March 10, 1991, for an on-duty time of 9:00 a.m. for the LZB59-10 Job at Yermo, California. Claimant did not work the assignment for which called.

Evidence adduced at the investigation indicates that claimant had just moved to a new residence and as a result of such move was left with just one automobile, the other having been left behind while the move was being made. Claimant called the CMS office on the evening of March 9, 1991, and sought information concerning whether or not it looked like he might be called for a job the morning of March 10, explaining his transportation problem. At that time it did not look like he would be called until the afternoon of March 10. Accordingly, Claimant's wife, who is also an Engineer, took the automobile to cover her assignment the evening of March 9. Claimant then was left without a personal automobile for use as transportation, although he did possess a U-Haul truck which had been used in the move to his new address.

When claimant accepted the call at 7:00 a.m. he said nothing about the lack of transportation, but instead waited until shortly before 9:00 a.m. at which time he called CMS and notified that office he would be late for the 9:00 a.m. assignment.

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The Board here notes that claimant was expecting his wife to return from working her assignment in order that he would then have use of the automobile, but as it so happened, his wife was required to remain at work on overtime and was unable to return home in time for claimant to use the car to get to his assignment on time.

When the Supervisor of Yard Operations was notified that claimant was going to be late he was aware that claimant's wife was working overtime, and as a consequence, another engineer was called to protect the 9:00 a.m. assignment.

As a result of claimant's failure to protect the assignment for which called, he was assessed discipline of 31 days actual suspension from service and in addition Carrier also required claimant to serve a 30 day deferred suspension which allegedly had been assessed on February 13, 1991.

There is no evidence in the record before this Board to indicate that either claimant or the Organization was aware of the alleged 30 day deferred suspension on February 13, 1991. While Carrier did submit as an exhibit a copy of a letter dated February 17, 1991, notifying claimant of a 30 day deferred suspension for missing a call, such letter does not contain claimant's signature either accepting or rejecting this discipline.

Rule 136 of the existing agreement between the parties covers Discipline-Hearings and reads in part as follows:

"(a) Dismissal. No engineer will be dismissed, or, except as provided in section (b) have discipline assessed against his personal record, without first having a fair and impartial hearing.

(b) Discipline, including reprimand, demerit marks, or suspension, may be assessed against the personal record of an engineer without a formal hearing only when the engineer is given written notice within five (5) days from date of the occurrence for which discipline is assessed, specifying the measure of discipline proposed and the reasons therefor. At the time written notification is received by the accused, an agreement may be reached and the hearing waived, at which time the employe will sign a waiver to that effect and acknowledge receipt of the written notification. Should the discipline not be acceptable, the engineer may, upon receipt of the written notification, request a formal hearing which will be conducted within five (5) days from the date of such rejection. If the engineer is found to be at fault as a result of formal hearing, the discipline assessed against his personal record shall not exceed the

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measure of discipline originally proposed in the written notification.

"Notice of discipline assessed under this section will be issued within five days from the date of the occurrence and will show charges, place, date and approximate time of the occurrence for which the discipline is assessed.

* * *."

During the course of the investigation claimant stated he had never received this February 17 letter and under the rule discipline can only be assessed without a formal hearing when the employe signs a waiver to that effect. Carrier has not produced such signed waiver consequently the discipline of 30 days deferred suspension was not assessed under the rule as above quoted.

It is the Organization's position before the Board that Carrier improperly required claimant to serve a 61 day suspension from service in that the 30 day deferred suspension could not be held against claimant under the circumstances here involved.

The Board is of the opinion that the circumstances leading to claimant's failure to protect the assignment at 9:00 a.m. on March 10 were unique, however, claimant did accept the call at 7:00 a.m. and it was then his responsibility to show up for his assignment. His failure to do so is his responsibility and we cannot fault Carrier's action in finding him guilty of the charge.

The Board is concerned, however, about the discipline assessed, i.e., a 31 day actual suspension with a requirement that claimant also serve an additional 30 days for a prior deferred suspension which does not appear to be properly in the record.

Accordingly, it is the Board's decision that in view of the overall circumstances surrounding claimant's inability to show up for the 9:00 a.m. assignment on March 10, the discipline for the infraction should be reduced to a 30 day deferred suspension. Inasmuch as the 30 day deferred suspension in February is not properly on claimant's record, it must be removed therefrom.

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AWARD

The 31-day actual suspension is reduced to a 30 day deferred suspension and claimant is to be compensated for the time he was held out of service.

Carrier is instructed to comply with this award within 30 days of the date hereof.



F. T. Lynch, Arbitrator

Award date June 20, 1995