

PUBLIC LAW BOARD NO. 5943

PARTIES) **BROTHERHOOD OF LOCOMOTIVE ENGINEERS**
TO)
DISPUTE) **UNION PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM

Claim of Engineer R. W. Noble for reinstatement with pay for all time lost as a result of dismissal for attempted fraud.

OPINION OF BOARD

Claimant, an Engineer with over 23 years of service was dismissed by letter dated February 16, 1996 for dishonest conduct and failure to follow instructions.

On August 14, 1994, Claimant sustained an on the job injury. Claimant was assigned light duty and was compensated for visits to his doctors. Claimant was advised on August 29, 1995 that he was no longer eligible for light duty and that he was to no longer submit non-service time slips for time lost.

The Carrier was advised by letter dated November 6, 1995 that Claimant would be represented by an attorney in legal proceedings related to Claimant's injury. Because of Claimant's representation by an attorney, the Carrier ceased dealing

directly with Claimant. Suit was filed against the Carrier on December 19, 1995.

Claimant filed a time slip for January 18, 1996 for time spent at a doctor's appointment relating to his prior injury. Claimant was then charged with dishonest conduct and failure to follow instructions.

The Carrier is required to demonstrate by substantial evidence that Claimant was dishonest and failed to follow instructions. All the record reveals in this case was that Claimant filed for time for a doctor's appointment related to his prior on the job injury. Substantial evidence does not support the charges.

Claimant shall be reinstated and made whole to the extent lost earnings are not covered by his FELA action. Claimant's entitlements shall be based on his test period earnings as an Engineer.

AWARD

Claim sustained.

Edwin H. Benn

Edwin H. Benn
Neutral Member

Carrier Member
A. C. Hallberg

W. R. Slone II

Organization Member
W. R. Slone II

Fort Worth, Texas

Dated: August 1, 1998