

PUBLIC LAW BOARD NO. 5997

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS)	)	
VS	)	NMB CASE NO. 26
	)	AWARD NO. 26
UNION PACIFIC RAILROAD COMPANY	)	

STATEMENT OF CLAIM:

Claim of Engineer T. J. Lindstedt of North Platte, Nebraska, for retention of his standing on the Engineer's Seniority Roster, pay for all time lost and removal of any entry in his personal record relating to this improper dismissal.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved. The parties to this dispute were given due notice of hearing thereon.

The employee here involved had been unable to perform any duties for Carrier from March 17, 1996 to May 18, 1998 as a result of an on-duty accident.

On or about December 9, 1997, claimant was notified by Superintendent Transportation Services J. E. Biebel that his services were being terminated. When claimant sought an explanation for such termination, Carrier advised he had forfeited his seniority account failure to comply with General Notice No. 47 and Leave of Absence Rule 80(c); i.e., his failure to return from Leave of Absence resulted in forfeiture of his seniority. It is Carrier's position the rule is self-executing, therefore, there was no need to conduct a formal investigation as set forth in the discipline rule.

On May 18, 1998, claimant entered into a voluntary agreement with the Carrier providing for a monetary settlement for the on-duty injury which he sustained as a result of the accident on March 17, 1996. This settlement agreement, among other things, specifically provided claimant was "DISABLED-To be retained on seniority roster as a permanently disabled employee WITHOUT THE RIGHT TO RETURN TO ACTIVE SERVICE." The agreement likewise preserved claimant's appeal of the termination of his position on the seniority roster; i.e., the instant claim before this Board.

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In addition to the above, the settlement agreement specifically provides claimant, in the event his appeal of the termination of his position on the seniority roster is successful, waived all rights to return to active service as well as waiving any back pay, wages or any other benefits which may result from his appeal.

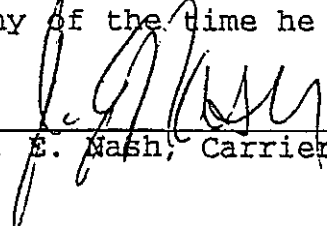
It is the opinion of this Board that the December 9, 1997, action of the Superintendent Transportation Services in removing claimant's name from the seniority roster for allegedly failing to return from Leave of Absence was somewhat premature in that claimant was actually out of service as a result of the injury sustained in the accident on March 17, 1996. Accordingly, claimant was on Leave of Absence as a result of his disability and Rule 80(c) had no bearing on his return or failure to return from such leave. In addition, as noted hereinabove, the settlement agreement dated May 18, 1998 (just five months after the Superintendent's action) specifically provided claimant was to be retained on the seniority roster as a permanently disabled employee.

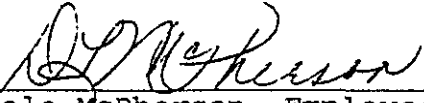
Based on the record before this Board in its entirety, it is our opinion that the settlement agreement, voluntarily entered into between claimant and the Carrier, clearly nullifies the December 7, 1997 action. In accordance with the settlement agreement, claimant's name should properly appear on the involved seniority roster.

The record is also clear that claimant was permanently disabled, that he was unable to perform any service for the Carrier after March 17, 1996, therefore, he would not be entitled to payment for any time he performed no service. In point of fact, in addition to its other provisions, the settlement agreement specifically "releases the Union Pacific Railroad Company from any and all claims."

#### AWARD

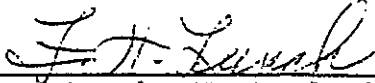
Claimant's name should be restored to its proper place on the seniority roster as a permanently disabled employee, as set forth in the settlement agreement. Claimant is not entitled to pay for any of the time he has been out of service.

  
J. E. Nash, Carrier Member

  
Dale McPherson, Employee Member

Award date

4-12-2000

  
F. T. Lynch, Neutral Chairman