

AWARD NO. 13
CASE NO. 13

PUBLIC LAW BOARD NO. 6010

PARTIES TO DISPUTE: Brotherhood of Locomotive Engineers
Union Pacific Railroad Company (Western District)

STATEMENT OF CLAIM: Request for expungement of letter of reprimand
(UPGRADE Level 1) assessed against Engineer
E. R. Powers, and pay for any time lost.

FINDINGS:

The Board, upon consideration of the entire record and all the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

Subsequent to a formal investigation on August 3, 1994, Claimant was advised by the Carrier on August 15, 1994 that his record was being assessed Upgrade Discipline Level 1, Letter of Reprimand, on the basis of the following charges having been sustained:

“While you were employed as Engineer on the PRSED-26 at approximately 3:10 a.m., on May 29, 1994, Argo Yard Office, near MP 180, on the Seattle Subdivision No. 441, you acted in a discourteous manner in writing on Buddy Board located in the Argo Crew Room.”

The charges filed against Claimant had their origin in an on-going personal dispute between Claimant and a female employee, hereinafter referred to as the Complainant. The problem between the two had been the subject of at least one meeting with the principals and Carrier officers and it was presumed that the situation had been resolved.

However, on May 29, 1994 a message appeared on the chalk board, also referred to as a Buddy Board, in the Crew Room at Argo yard in Seattle, Washington, which read:

"What goes around comes around",

or words to that effect.

In the belief that the message was directed at her and that it had been written by the Claimant, the Complainant referred the matter to Carrier officers resulting in Claimant's being charged and found guilty of having "acted in a discourteous manner".

At the hearing, the Complainant testified that it was her woman's intuition that caused her to believe that the message had been written by Claimant and that it referred to the problems that she had been having with him. She stated that she thought the problems were behind them as a result of the meeting with the superintendent, but when she saw the message, she realized they were not.

Claimant admitted in his testimony that he had indeed written the message, but denied that it had any reference to the Complainant. As a matter of fact, he had a difficult time explaining exactly what the message did refer to.

Based on the testimony of various individuals, chalk boards, or Buddy Boards, were initially erected as part of the safety program. In time, they became vehicles for sending other types of messages, some comical, others inflammatory, and it is not unusual for some of the remarks to be directed at Carrier officers. It was the consensus of those testifying that the remarks and graffiti were largely ignored and no one could recall disciplinary action ever having been taken against a perpetrator.

The remark "what goes around comes around" is a common expression and while it may be susceptible to a variety of interpretations, it has not been considered, in the

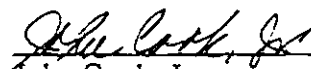
Board's experience, particularly inflammatory or, for that matter, a discourteous comment.

And, even if it were, the Board is troubled by the lack of probative evidence that the remark was directed to the Complainant.

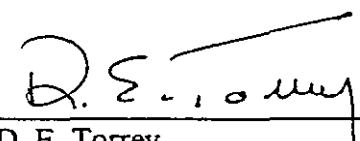
Claimant was charged and found guilty of having "acted in a discourteous manner in writing on Buddy Board." In the Board's opinion, the Carrier has failed in its burden of proof.

AWARD: The claim is sustained.

ORDER: The Carrier is ordered to comply with the terms of this Award within thirty days of the date hereof.



John Cook, Jr.
Chairman and Neutral Member



D. E. Torrey
Carrier Member



J. L. McCoy
Employee Member

Dated at Portland, Oregon this 25th day of August, 1998.