

PUBLIC LAW BOARD NO. 6040

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
(Eastern District)

STATEMENT OF CLAIM: Claim of Engineer B. J. Smith of Denver, CO for pay for all time lost and removal of discipline from his personal record (Level 2).

OPINION OF BOARD: At all times pertinent to this matter, Engineer B. J. Smith ("Claimant") was working in yard service off the extra board, running switch engines in the Denver Yard. The facts giving rise to the assessment of the UPGRADE Level 2 discipline under review are not in contention. Thus, it is undisputed that on June 14, 1998, Claimant reported for duty some 18 minutes late; after receiving and accepting a call for Job YDV21, a switch helper on duty at 3:45 PM. Nor is it disputed that Claimant was called for this job at 1:32 PM, more than two (2) hours before reporting time. Finally, it is undisputed that Claimant had also been late reporting for duty on different 3:45 PM jobs earlier that same week: on June 11 (16 minutes late) and June 12 (52 minutes late).

The record shows that on each of these occasions, Engineer Smith was confronted by his supervisors and each time he told them that he was late due to problems arranging child care for his son. Engineer Smith is a single parent and according to his undisputed testimony the reason he was late for work on each of the dates mentioned *supra*, was because he had to make last-minute arrangements for someone to care for his child after the prearranged child care provider failed to appear. When he was late the first time, on June 11, MTO Marzano counseled Claimant that even though being a working single parent was difficult, he was expected to take care of his job and be at work on time. On the next day, June 12, Claimant was 52 minutes late and brought his son to work with him because, after he accepted the call, he found out that his day care provider was no longer in business. On that occasion, MTO Murray allowed Claimant to leave the child in the yard office until someone could come and pick him up.

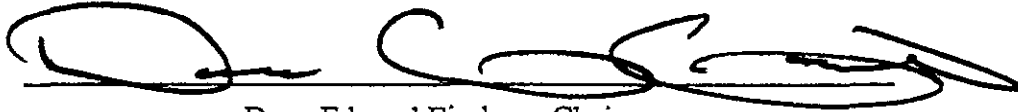
Two days later, when Claimant was again late reporting for duty, he was cited for allegedly violating Rule 1.13: *"Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties"*. Following a formal investigation, Carrier found Claimant guilty as charged and assessed a "stand-alone" Level 2 UPGRADE discipline.

In reviewing the entire record, this Board concludes that Carrier did not compromise or hinder Claimant's rights under the BLE System Discipline Rule and did demonstrate that he failed to comply with reasonable supervisory instructions concerning reporting on time for duty. The plight of a working single parent with lack of reliable child care somewhat mitigates his culpability, as his immediate supervisors apparently recognized in granting him some forbearance on the first

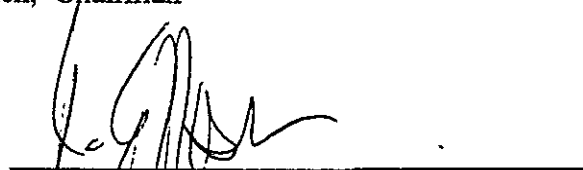
two occasions. After the third occurrence in the same week, however, it was not unreasonable for Carrier to apply a measured dose of discipline to reinforce the message that employees must "take care of the job and get to work on time". In light of all of the circumstances, including the undisputed fact that prior to the events this Engineer was discipline-free for four (4) years, the Level 2 discipline is modified to a Level 1 on Claimant's record but his request for "pay for all time lost" is denied.

AWARD

- 1) Claim sustained to the extent indicated in the Opinion.
- 2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.



Dana Edward Eischen, Chairman


Union Member
Company Member