

PUBLIC LAW BOARD NO. 6155

Case No. 6
Carrier File No. 9302859
Organization File No. 08053A
NMB Code 106
Award No. 6
Claimant: Engineer A. Scott

PARTIES TO THE DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

AND

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

The Organization appeals the Letter of Reprimand of Engineer A. Scott and requests the expungement of the discipline assessed from her personal record and pay for all lost time with all seniority and vacation rights restored unimpaired.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated July 29, 1998, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

The Claimant was advised by certified letter dated April 29, 1993, that she was to attend a formal Investigation on Monday, May 3, 1993. The purpose of the hearing was to develop facts to determine whether she had refused call to perform service as an Engineer for Train CSKLA-21 on duty at 9:15 p.m. on April 24, 1993, at Los Angeles, California.

The hearing was postponed and held on May 11, 1993. After reviewing the transcript of the hearing, the Carrier issued the Claimant a Letter of Reprimand.

ORGANIZATION'S POSITION

The Organization strongly disputes the Carrier's contention that the Claimant refused a call on April 24, 1993. Instead, they point to a transcript of a tape recording of a conversation the Claimant had with the Dispatcher. They contend that the tape reveals that the Claimant asked the Dispatcher if she could lay

off for personal reasons, which the Dispatcher refused before hanging up on the Claimant.

The Organization argues that the Carrier wants to punish the Claimant while allowing another employee to report off the same evening without consequence. They contend that the first employee reportedly was granted lay-off status despite the fact, they had attempted to call her for duty three times that evening. Not only was the other employee allowed to lay off, but, she was not punished. Furthermore, the Organization contends the Claimant called in to report off duty 25 minutes beyond when she should have been called to duty. However, they argue, she was not allowed to report off. She was punished for the Dispatcher's frustration. She was marked as a refused call despite the fact she called back and tried to accept the call. The Organization contends that the Claimant wanted to speak to a supervisor, but, the Shift Manager would not return her call despite the fact she left a message.

In light of the circumstances, the Organization requests the charges be expunged from the Claimant's personal record.

CARRIER'S POSITION

The Carrier argues that despite being asked several times on the evening of April 24, 1992, the Claimant never agreed to take the call nor did she ask to report off sick. She wanted personal leave, but, it wasn't possible. The reason the other employee was granted the lay off was because the Carrier was aware that her frequent absences were the result of her father's terminal cancer.

DECISION

As the record indicates, the Carrier attempted to call the Claimant four times before she called in; twice at a recorded time of 7:36 p.m.; once at 7:37 p.m.; and finally at 7:38 p.m.. For whatever reason, they were unable to make contact with the Claimant. Unfortunately for the Claimant, her discipline record shows that prior to this incident, she had missed calls six times since 1989. While it may be difficult serving on an Extra Board, one assumes those hardships when they accept such a position. Employees must be aware that they place the Carrier in a difficult position when they do not call in advance to request time off. After all, the purpose of the Extra Board is to be available "on call" when a position has to be filled unexpectedly. There is no way the Carrier can maintain its schedule if they cannot rely on members of the Extra Board to fill vacancies as they occur.

Even though the Claimant called back 7 minutes after refusing the call, it did not negate her refusal to take the call

in the first place. Nor can she argue that she did not refuse. Once her request for lay off was denied she was left with no choice but to take the call. When an employee refuses a call, a Dispatcher cannot wait to fill a job on the presumption that the employee may subsequently have a change of heart. The Dispatcher justifiably believed the Claimant refused the call when she said, "Well okay. Well, go ahead 'cause I can't take it, so you have to run a route 'cause I can't . . ."

However, the Board sees little difference in the actions of the Claimant and the other employee who was allowed to lay off. Neither called in advance and both reported off for reasons other than illness. True, the other employee reportedly had a terminally ill father, but, that in and of itself was no reason for failing to call in advance to request to lay off. She too was called four times before she herself called in. While the Carrier's consideration for her situation was admirable, the employee still had an obligation to the Carrier and fellow employees.

Both employees had attendance problems. When one was disciplined and not the other it was disparate treatment.

AWARD

The claim is sustained.



Carol P. Zamperini
Chairman and Neutral Member

This 30th day of September, 1998.
Denver, Colorado