

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6198**

**JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
A. C. HALBERG, CARRIER MEMBER
D. E. THOMPSON, ORGANIZATION MEMBER**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
SLSW, GENERAL COMMITTEE**

and

**UNION PACIFIC RAILROAD COMPANY
(FORMER ST. LOUIS SOUTHWESTERN RY. CO.)**

**Award No. 2
Case No. 2**

*Date of Hearing - March 31, 1999
Date of Award May 24, 1999*

Statement of Claim:

Claim of Engineer D. L. Smith to expunge from personal record discipline letter of February 25, 1998, and be paid for all time lost from investigation and suspension.

FINDINGS:

Public Law Board No. 6198, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

The herein Claimant, Engineer D. L. Smith, a 26-year employee, with an incident free record, and 10-years service as a Road Foreman of Engines, was operating a train between Pine Bluff, Arkansas and Memphis, Tennessee, on New Years Day, 1998. As the train approached Mounds, Signal 14.2 indicated Red. Engineer Smith stopped his train, at the West End of Mounds, and then proceeded eastbound. On the East End of Mounds, upon approaching Signal 12.6, with a Green indication, the train ran though an improperly aligned handthrow switch, causing damage of a bent switch rod.

Claimant was cited to attend an investigation, following which he was assessed a thirty day suspension. The Organization has appealed the suspension on a variety of grounds, both procedural and substantive.

The Organization first claims that discipline was assessed under the Union Pacific discipline policy. Referencing legal positions that the Carrier has taken in several unrelated court cases, that policy cannot be applied to SSW operations, the Organization states. Furthermore, certain aspects of the SSW Agreement were not procedurally followed, it is argued.

On the merits, the Organization asserts that Claimant was operating his train prudently at the time of the incident, that someone else was responsible for leaving the involved handthrow switch miss aligned, and that there are handthrow switches run through every day with little damage and no discipline assessed.

Carrier argues that the discipline assessed should not be disturbed because there were no procedural errors sufficient to void the discipline assessed. If there were procedural defects, these were just harmless error, it is asserted. The Carrier has established by substantial evidence that Claimant was guilty of the charge, and that the discipline assessed was reasonable and proper under its published guidelines, it is argued.

There is no question in this record that Carrier failed to provide the Organization with a transcript of the investigation within the time limits provided in the controlling Rule. It argues that this was a harmless error, and that Claimant was not prejudiced by this failure. The Board cannot agree. The requirements of the rule are not conditioned upon compliance only in those instances in which "harmless error" or lack of prejudice" is argued to be missing. (See First Division NRAB Award 24180, involving this same question.)

The Rule is the parties "statute of limitations," openly developed for their continued conduct. A failure to comply to the letter of this "statute of limitations" flaws the discipline if the failure is on the part of the Carrier, and negates any appeal entitlements if the failure is on the employee or the Organization. When such failures occur, neither party is privileged to escape the consequences because they did not act timely or in literal lock-step compliance with the requirements of the Rule, even when the error is alleged to have been harmless.

Accordingly, it is not necessary to visit the merits of this matter, except to note that if it were to be addressed Carrier's case would have been overturned, because among other things it was not adequately established that Claimant was guilty of misconduct.

In conclusion, it is the finding of this Board that the disciplinary procedure was fatally flawed when Carrier failed to comply with the Agreement and timely furnish the Organization with a copy of the investigation transcript.

The claim will be sustained. All reference to the discipline is to be removed from Claimant's record, and he is to be paid for all wage and benefit losses incurred.


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BLE - UP
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D. L. Smith
30-day Suspension

A W A R D

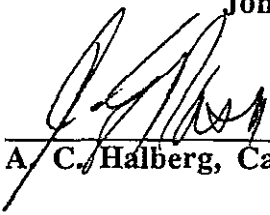
Claim sustained.

O R D E R

The Board concludes that an award favorable to Claimant will be made. Carrier is directed to comply with this award and make any payments that may be required within sixty days of the date indicated below.



John C. Fletcher, Chairman & Neutral Member

for  5-31-99
A. C. Halberg, Carrier Member



D. E. Thompson, Organization Member

Dated at Mt. Prospect, Illinois., May 24, 1999