

AWARD NO. 149
NMB CASE NO. 149
UNION CASE NO. 20154
COMPANY CASE NO. 1287405

PUBLIC LAW BOARD NO. 4450

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY
(Western Region)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

Appeal the UPGRADE Level 5 Discipline assessed to Engineer W. W. Harrop and request the removal of discipline assessed and pay for any and all time lost with all seniority, vacation and all other rights restored unimpaired.

OPINION OF BOARD: At the time this case arose, W. W. Harrop ("Claimant") had 11 years of service with the Carrier, during part of which he had been counseled concerning excessive absenteeism. For that reason, he was placed on the preferred attention list and, on or about September 2, 2001, Crew Management Systems (CMS) notified Claimant's supervisor Manager Operating Practices (MOP) L. Busch that Claimant had not performed service since July 14, 2001. MOP Busch attempted to contact Claimant on several occasions over the next few weeks to determine why he had not been working. After a number of failed telephone attempts, on September 20, 2001 a letter was sent to Claimant via U.S. Certified Mail instructing Claimant to contact his supervisor, L. Busch. The notice was received by and signed for by Claimant.

As of September 29, 2001 MOP Busch had received no response from Claimant and concluded that there was a possible violation of General Code of Operating Rules 1.6, 1.13, 1.15 and

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Superintendent's Bulletin No. 27. On that basis, Carrier issued Notice of Investigation and Hearing, sent to Claimant on September 29, at his address of record via U.S. Express Mail, providing in part:

Please report to the Union Pacific Offices, Manager of Terminal Operations, Conference Room, 3311 Pacific Avenue, Ogden, Utah 84401, on Friday, October 5, 2001, at 1300 hours for investigation to develop the facts and determine your responsibility, if any, in connection with the following charges:

While employed as Engineer for the Union Pacific, Ogden, Utah, you allegedly have displayed an indifference to duty and were insubordinate as you were absent from work in excess of thirty (30) days, in possible violation of Rules 1.6 (Conduct; Insubordinate) and Rule 1.15 (Duty - Reporting or Absence), and Rule 1.13 (Reporting and Complying with Instructions) as contained in the General Code of Operating Rules, effective April 2, 2000, UPRR Revised System Special Instructions, effective April 2, 2000, and Superintendent's Bulletin No. 27, effective February 5, 2001.

Following the investigation, at which Claimant appeared and testified concerning his medically diagnosed condition of acute depression, Carrier found him guilty of insubordination and excessive absenteeism and imposed the discharge penalty. We conclude that Claimant cannot escape all responsibility for his failure to comply with Rule 1.15 (Duty - Reporting or Absence) and maintain an attendance record compatible with full time employment. However, Carrier's conclusion that he was also insubordinate by wilfully refusing to comply with supervisory instructions is not supported by the record evidence. Indeed, his unrefuted testimony concerning the debilitating effects of his medically diagnosed condition of clinical depression, for which he was at one time in EAP treatment, runs counter to a finding of wilful insubordination.

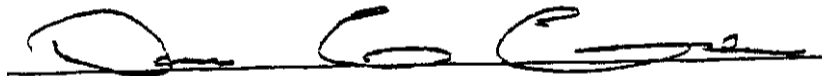
Given the unique factual situation presented on this record, and without precedent, we direct Carrier to tender Claimant a "Last Chance" reinstatement without back pay, conditioned on the following: 1) Claimant must contact EAP within thirty (30) days of the issuance of this Award to initiate a treatment plan for dealing with his depression; 2) EAP must certify to Carrier that Claimant is cleared for return to work. If so reinstated, "Last Chance" means that Claimant will be subject to dismissal for future proven violations of Rules 1.13 and 1.15, but there is no waiver of his

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contractual rights under the System Agreement-Discipline Rule .

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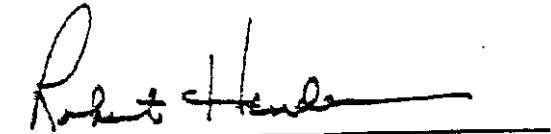
- 1) Claim sustained in part and denied in part, as indicated in the Opinion of the Board.
- 2) The thirty (30) day period for Claimant's compliance with the EAP referral specified in this Award shall run from the date of execution by a majority of the Board.



Dana Edward Eischen, Chairman



Union Member



Company Member