

Award No. 646
Case No. 646

PUBLIC LAW BOARD NO. 5383

BROTHERHOOD OF LOCOMOTIVE ENGINEERS)	
)	
vs.)	Parties to Dispute
)	
UNION PACIFIC RAILROAD COMPANY)	

STATEMENT OF CLAIM:

Claim of Engineer J. L. Ferris, Eastern Seniority District No. 1 (CNW) for removal of Level III discipline from Claimant's service record and for payment of all time or miles lost including the time attending the investigation and the resulting five (5) day suspension. Claimant was required to attend investigation on May 15, 1996 on the following charge:

"Your responsibility for your alleged violation of Rule 81.4 of the General Code of Operating Rules, which resulted in injury to yourself on March 4, 1996, at approximately 10:35 a.m., while on duty as engineer on train NPCHBR-02 on duty March 3, 1996 at 2350 hours."

Subsequent to the investigation, Claimant received a Level III, five (5) day suspension effective May 23, 1996 through May 27, 1996.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within

the meaning of the Railway Labor Act, as amended, and that the Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

While getting off an engine, Claimant Engineer slipped on the ladder and suffered a leg injury subsequently diagnosed as a broken tibia bone. He was charged with violation of Operating Rule 81.4 which resulted in the injury described. Following a disciplinary hearing, he was assessed five (5) days suspension under Level 3 of the Carrier's "Upgrade" Policy.

The record establishes that a Carrier officer investigated the incident and testified at the hearing but did not witness the accident when it occurred.

The weakness in the case against Claimant stems from the fact that two (2) employees were on the scene and observed the incident but were not called to testify at the hearing. In First Division Award 24296 (Muessig) (C&NW) the Board held in part as follows:

"The notion of a fair hearing requires that the Carrier summon to the hearing all witnesses which reason and logic

dictate may have some relevant and material testimony or evidence to present. The primary purpose of a hearing for which the Carrier has the burden of conducting fairly, is to develop the facts and circumstances with respect to the issues that are raised by the charge, including those facts which favor as well as those which are adverse to the Claimant."

In First Division Award 19910 (Daugherty) (K.C. Terminal)

the Board stated in part:

"As to the calling of witnesses, a carrier's role is that of judge; a carrier is, by rule and by the general principle of fairness, obligated to obtain all the essential facts related to the charge. This means that a carrier must call all witnesses who possibly might be able to throw factual light on the occurrences involved. It means that in respect to the calling of witnesses the judicial function must dominate the behavior of a carrier. It is not enough for a carrier merely to rely on another provision of a rule, which, as here, maintains the right of the accused to call his own witnesses to testify in his behalf."

What was said in the Awards cited above, and others, is applicable here. The discipline must be set aside.

AWARD

Claim is sustained.

ORDER

The Carrier is ordered to make this Award effective within thirty (30) days from the date shown below.

B. H. Ince Arthur
Employee Member

W. J. Gonzalez
Carrier Member

St. Kelly
Chairman and Neutral Member

Dated: 2-16-99