

PUBLIC LAW BOARD NO. 5719

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

VS)

UNION PACIFIC RAILROAD COMPANY)

NMB CASE NO. 56

AWARD NO. 56

STATEMENT OF CLAIM:

Appealing the Letter of Reprimand assessed Engineer D. A. Hall and request the expungement of discipline assessed and pay for all lost time with all seniority and vacation rights restored unimpaired. This action is taken as a result of the investigation held on June 24, 1994.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved.

Claimant was summoned for formal investigation "to develop the facts and determine responsibility, if any, concerning your alleged improper conduct being discourteous and quarrelsome while performing service as Engineer on YRNP-20, on duty at 10:30 p.m., June 19th, 1994, Yermo, California." Following the investigation Carrier found claimant to be in violation of Rule 1.29 which reads as follows:

"1.29 Avoiding Delays

"Crew members must operate trains and engines safely and efficiently. All employees must avoid unnecessary delays.

"When possible, train or engine crews wanting to stop the train to eat must ask the train dispatcher at least one hour and thirty minutes before the desired stop."

The Board would here note that claimant was not charged with violation of Rule 1.29 or with delaying the train, therefore, she could not be found guilty thereof and Carrier erred in so doing.

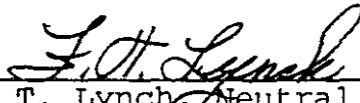
-2-

While the record before this Board does reveal there was a confrontation between claimant and her conductor, the evidence is clear that following the disagreement between them, claimant properly sought assistance from a Carrier officer. After the officer discussed the matter with both parties, he offered them the opportunity to continue operating their train to its final destination. Both claimant and her conductor stated they could so operate the train, however, the officer elected to remove them from service pending the investigation. Claimant was out of service for 17 days before she was assessed Level 1 discipline (Letter of Reprimand) under Carrier's UPGRADE Discipline Policy.

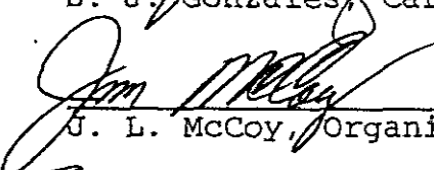
Based on the record in its entirety it is the opinion of this board that Carrier acted improperly in removing claimant from service, failed to prove with substantial evidence that claimant was responsible for the verbal confrontation with her conductor, and improperly found her to be guilty of violation of Rule 1.29.

AWARD

Claim sustained. Carrier is instructed to comply with this award within 30 days of the date hereof.


F. T. Lynch, Neutral Chairman


D. J. Gonzales, Carrier Member


J. L. McCoy, Organization Member

Award date

Sept. 14, 1958