

PUBLIC LAW BOARD NO. 5943

PARTIES)	BROTHERHOOD OF LOCOMOTIVE ENGINEERS
TO)	
DISPUTE)	UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM

Claim on behalf of Engineer E. A. Humphreys for reinstatement to service due to his dismissal as the result of an investigation April 12, 1994, for failure to comply with the FRA recertification requirements.

OPINION OF BOARD

Claimant was dismissed by letter dated April 18, 1994 for failing to comply with instructions of the Carrier to take the necessary steps to obtain recertification of his engineer's license.

The record shows that during January, 1994, Claimant's supervisor, G. A. Fowler, repeatedly took steps in an effort to get Claimant to comply with the steps necessary for recertification of his license, including giving Claimant the certification package. Fowler also instructed Claimant on the steps necessary to complete his recertification and advised Claimant that his license would expire upon Claimant's birthday, February 22, 1994. On January

6 and 15, 1994, Fowler advised Claimant on the remaining steps necessary for recertification. Tr. 16-20.

Notwithstanding Fowler's efforts, Claimant did not complete all of the steps for recertification. Claimant did not takes steps to comply with the medical portion and the national and state driving records of the recertification requirements. Tr. 21. As a result of Claimant's failure to follow all of the required steps for recertification, on his birthday February 22, 1994, Claimant's engineer's license was suspended. Tr. 22. Claimant was then charged and ultimately dismissed.

Substantial evidence supports the Carrier's determination that Claimant failed to comply with instructions. Claimant was repeatedly advised — indeed, even assisted — by the Carrier concerning his obligation to take the necessary steps for recertification. Claimant simply did not follow those instructions.

As a result, Claimant's license was suspended. Under the circumstances, dismissal as a result of Claimant's failure to follow instructions was not arbitrary.

The Organization's procedural arguments concerning notification and timing of the notification of the investigation do not change the result.

First, the record shows that the Carrier attempted to notify Claimant of the investigation at Claimant's last known address, without success and even sent an individual to attempt to personally locate Claimant. Tr. 6-9, 13-14.

Second, with respect to the timing of the notice of investigation, the evidence does show that Claimant's license was suspended effective February 22, 1994 and that the notice of investigation issued April 7, 1994. The Organization thus argues that the notice of investigation issued some 45 days after the Carrier was aware that Claimant failed to recertify and hence, Rule 44 which requires the notification of charges "within ten (10) days from the time a Company Officer authorized to order investigations has or reasonably should have had information of the inci-

dents to be investigated" was not adhered to.

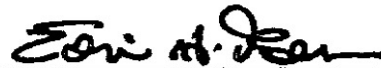
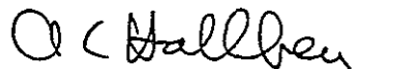
We disagree. The burden here is on the Organization to demonstrate that Rule 44 was not complied with. That burden has not been met.

If Claimant were charged and dismissed solely for failure to recertify, the 10 day time period would, as the Organization argues, commence running from the date Claimant's license was suspended as a result of his failure to recertify — February 22, 1994. But, Claimant was *not* charged and dismissed for failure to recertify. Claimant was charged with "*failure to comply with instructions* issued to you ... concerning information required for your engineer license recertification." Car. Exh. B. Claimant's dismissal was based on those same grounds. Car. Exh. C. The consequences of failing to recertify were that as of February 22, 1994, Claimant "could not mark up". Tr. 41. The record shows that all Claimant had to do was complete the remaining parts of the recertification requirement and he would have been able to work as a result of his recertification — even if those steps were taken after February 22, 1994. The Organization has not shown that it

was unreasonable for the Carrier to wait the time it did before concluding that Claimant was not going to comply with the instructions to complete the recertification requirements. We therefore cannot find that the Organization has demonstrated that the Carrier acted in an untimely manner under Rule 44. Indeed, if the benchmark were the date an employee's license expired, the logical end result would be that the employee who completes the recertification requirements one day late would be deemed to have engaged in insubordination requiring dismissal. That would be an unfair result. Here the Carrier waited for a reasonable period of time until it was certain that Claimant was not going to comply with the instructions to complete the recertification requirements. Under the circumstances, we cannot find the notification requirements under Rule 44 have been violated.

AWARD

Claim denied.

Edwin H. Benn
Neutral Member

Carrier Member



Organization Member

Fort Worth, Texas

Dated: May 24, 1999