

PUBLIC LAW BOARD NO. 5943

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

SUPPLEMENTAL OPINION

This Board previously ruled in this case:

... [S]ubstantial evidence does not support the Carrier's positions in the disciplinary actions called for investigation in the August 23, 1994 and September 16, 1996 notices of investigation. Substantial evidence does support the Carrier's position in the disciplinary action called for investigation in the September 9, 1996 notice of investigation resulting in a Level 4 disciplinary action.

As a remedy, the disciplinary actions found without merit shall be removed from Claimant's record. Claimant shall further be restored to his former position and made whole until June 10, 1997, less the consequences of a 30 day suspension.

The Organization presently argues that the Carrier has not fully complied with that award. Two questions are presented.

First, the Organization advises this Board that it took the Carrier approximately 90 days to restore Claimant to service after directed to do so by this Board, whereas ordinarily, restoration to service only takes 30 days.

This Board does not have before it the specific amount of time it

took the Carrier to restore Claimant to his former position. Nor does this Board have the specific reasons why there may have been a delay, if any, in restoring Claimant to service. We agree that 30 days is a reasonable period of time to restore an employee to service after being directed by this Board to do so. Therefore, unless the reasons for delay in Claimant's restoration to his former position were attributable to Claimant, Claimant shall be further made whole for any time beyond 30 days from this Board's original award that it took the Carrier to restore Claimant to his former position as directed by this Board.

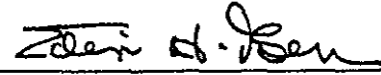
Second, the parties disagree on how to treat a \$17,500 payment by the Carrier to Claimant which was made as part of settlement of a legal action in the matter of *Hampton v. Missouri Pacific Railroad Company d/b/a Union Pacific Railroad Company*, No. 96-57745 (Harris County, Texas). The Carrier argues

that the \$17,500 should be offset from Claimant's backpay entitlement under our prior award. The Organization disagrees.

We agree with the Organization that the \$17,500 should not be offset against Claimant's backpay entitlement under our prior award. The Apportionment Agreement of June 5, 1997 signed by Claimant and the Carrier specifies a total settlement in the court action in the amount of \$17,500. In the section of that agreement specified as "Amount Apportioned to 'time lost'", Claimant and the Carrier agreed to "None". The parties to the court action therefore did not intend the \$17,500 to be attributed to time lost. The Carrier cannot now argue that sum should be for time lost. Further, in the June 5, 1997 Release in the court action, Claimant stated that "[p]ayment of the above sum ... does not release or waive Steve L. Hampton's right to pursue a labor matter in which a grievance is presently pending and which is related to the above released accident." Claimant therefore did not waive his right to pursue his claims before this Board.

The Carrier's position that Claimant's entitlement under our prior award should be reduced by

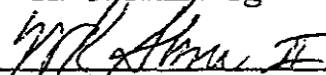
\$17,500 is without merit. Claimant shall be accordingly made whole.



Edwin H. Benn
Neutral Member



Carrier Member
A. C. Hallberg



Organization Member
W. R. Slone II

Fort Worth, Texas

Dated: 8/1/98