

PUBLIC LAW BOARD NO. 5943

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

STATEMENT OF CLAIM

Claim of Engineer R. W. Noble
for reinstatement with pay for
all time lost as a result of
dismissal for attempted fraud.

OPINION OF BOARD

Claimant, an Engineer with over
23 years of service was dismissed by
letter dated February 16, 1996 for
dishonest conduct and failure to
follow instructions.

On August 14, 1994, Claimant
sustained an on the job injury.
Claimant was assigned light duty
and was compensated for visits to
his doctors. Claimant was advised
on August 29, 1995 that he was no
longer eligible for light duty and
that he was to no longer submit
non-service time slips for time lost.

The Carrier was advised by letter
dated November 6, 1995 that
Claimant would be represented by
an attorney in legal proceedings re-
lated to Claimant's injury. Because
of Claimant's representation by an
attorney, the Carrier ceased dealing

directly with Claimant. Suit was
filed against the Carrier on
December 19, 1995.

Claimant filed a time slip for
January 18, 1996 for time spent at a
doctor's appointment relating to his
prior injury. Claimant was then
charged with dishonest conduct and
failure to follow instructions.

The Carrier is required to demon-
strate by substantial evidence that
Claimant was dishonest and failed
to follow instructions. All the
record reveals in this case was that
Claimant filed for time for a doctor's
appointment related to his prior on
the job injury. Substantial evidence
does not support the charges.

Claimant shall be reinstated and
made whole to the extent lost
earnings are not covered by his
FELA action. Claimant's entitle-
ments shall be based on his test pe-
riod earnings as an Engineer.

AWARD

Claim sustained.

Edwin H. Benn

Edwin H. Benn
Neutral Member

Carrier Member
A. C. Hallberg

W. R. Slone II

Organization Member
W. R. Slone II

Fort Worth, Texas

Dated: August 1, 1998