

PUBLIC LAW BOARD NO. 5997

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

VS )

UNION PACIFIC RAILROAD COMPANY )

NMB CASE NO. 27

AWARD NO. 27

STATEMENT OF CLAIM:

Claim of D. Delgado of North Platte, Nebraska, for reinstatement, pay for all time lost, and removal of any entry of discipline from his personal record (Level 5).

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.

The parties to this dispute were given due notice of hearing thereon.

Claimant here involved was summoned for formal investigation on a charge that he "allegedly acted inappropriately towards Donna L. Craig, an employee at the Marysville Lodging Facility, indicating violation of Rules 1.6, 1.7, 1.3.1, 1.9, as promulgated in the General Code of Operating Rules, effective April 10, 1994." Following the investigation Carrier found claimant guilty of the charge and assessed Level 5 discipline (dismissal from service) under the UPGRADE Discipline Policy.

This Board has had the opportunity to thoroughly review the hearing transcript and it is our opinion that sufficient evidence was produced at the hearing to justify a decision that Claimant was at fault. We have also had the opportunity to review claimant's record of employment and find that at the time this incident occurred he had accumulated over 20 years of service. The Organization has asked this Board to give consideration to claimant's record and in so doing to consider the penalty of dismissal from service as "harsh and excessive."

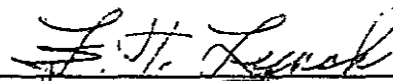
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Upon completion of the oral presentation of this dispute to the Board at the meeting held in Las Vegas, NV, on January 14, 2000, a Bench Decision was made to return claimant to service with all seniority and other rights unimpaired, with the distinct understanding that claimant would immediately contact the proper party and enter into the Employees Assistance Program for counseling and assistance so that he might understand and modify his behavior. A written decision, confirming the Bench Decision, was rendered by the Chairman of this Board and sent to the parties on January 17, 2000.

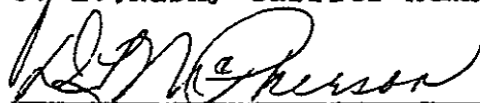
The issue remaining before the Board is the request of claimant that he be compensated for all time withheld from service. Inasmuch as the evidence produced at the investigation indicated claimant was involved in the incident, there is no justification for rewarding him with pay for time out of service.

AWARD

Claimant was returned to service in accordance with the Bench Decision but he is not entitled to compensation for time lost.

  
F. T. Lynch, Neutral Chairman

  
J. E. Nash, Carrier Member

  
Dale McPherson, Employee Member

Award date 4-12-2000