

PUBLIC LAW BOARD NO. 5997

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS)	)	
VS	)	NMB CASE NO. 31
	)	AWARD NO. 31
UNION PACIFIC RAILROAD COMPANY	)	

STATEMENT OF CLAIM:

Claim of Engineer B. R. McCall of Omaha, Nebraska, for reinstatement, pay for all time lost and removal of any entry of discipline from his personal record.

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 was summoned to a formal investigation on a charge that he "allegedly failed to make acceptable improvement as instructed" in his job protection, resulting in excessive absenteeism. Following the investigation Carrier found claimant guilty of the charge and assessed Level 3 discipline under the UPGRADE Discipline Policy.

This Board is in agreement with that portion of Carrier's position that "excessive absenteeism" is just cause for discipline. However, in this particular dispute it does not appear that claimant was guilty of "excessive" absenteeism, but instead was allegedly guilty of failure to improve his record of availability to protect assignments he may have been called to work.

The Board has closely examined the hearing transcript and we are unable to secure therefrom sufficient evidence to justify Carrier's finding and assessment of discipline.

The record does show that claimant was counseled by his supervising officer and was instructed to improve his record of availability. The record is also clear that claimant did improve his record, but that his Supervisor did not deem the improvement sufficient. A most disturbing element here is that no one has attempted to set guidelines to determine what is and what is not acceptable. Likewise lacking in this dispute is a comparison of

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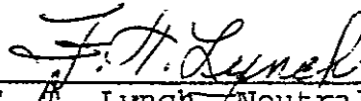
claimant's availability with the availability of the other employees working the Engineers' Extra Board. No information has been furnished to this Board which would enable us to make an informed determination as to whether or not claimant's work record was unacceptable when compared to the work record of other involved extra engineers. Actually there is nothing in the record before this Board to indicate whether or not claimant would have been called and utilized to perform service on the dates he allegedly was not available.

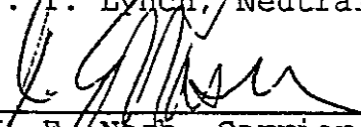
Based on the record in its entirety, the Board here finds that Carrier has failed in its burden to prove with substantial evidence that claimant was guilty of the charge against him, therefore, the discipline administered cannot be permitted to remain on his record.

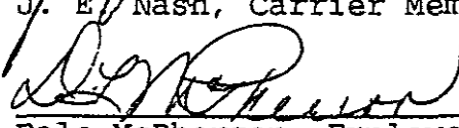
The Board believes that we would be remiss in our obligations if we did not caution claimant that his job might well be in jeopardy if he fails to be available for service. As we have noted above, absenteeism is a serious charge and if claimant intends to make railroading his career, he must do all in his power to be readily available to perform the needed service.

AWARD

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


F. F. Lynch, Neutral Chairman


J. E. Nash, Carrier Member


Dale McPherson, Employee Member

Award date 4-12-2000