

PUBLIC LAW BOARD NO. 6149

PARTIES TO DISPUTE: Brotherhood of Locomotive Engineers
Union Pacific Railroad Company

STATEMENT OF CLAIM: The Brotherhood of Locomotive Engineers, Chicago and North Western General Committee of Adjustment, requests the Board to consider and authorize the discipline case of Engineer T. R. Tucker, with claim for payment in full for all lost time and expunging any notation of this incident from claimant's service record.

FINDINGS:

The Board, upon consideration of the entire record and all the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On April 13, 1995, the Claimant was instructed by the Carrier to appear for a formal investigation at 10:00 a.m. on Saturday, April 15, 1995, on the following charges - -

Your responsibility for your violation of Rule 1.5 of the General Code of Operating Rules, Third Edition, effective April 10, 1994, and your violation of Federal Regulation CFR 49, Part 219.101 while employed as Engineer on job WWC10, on duty 10:00 a.m., April 13, 1995 at DeKalb.

Following a postponement requested by the Organization, the hearing was held on May 4, 1995.

On May 15, 1995, Claimant was advised in writing by Carrier's General Manager that he was being dismissed effective May 15, 1995.

On June 5, 1995, the Carrier notified Claimant as follows - -

Your Locomotive Engineers Certificate is hereby
revoked for 30 days in accordance with FRA
Regulation 49 CFR Part 219.101 This 30 day
revocation expired May 15, 1995

The record establishes that Claimant was returned to service on February 7, 1996 without prejudice to his claim for time lost, but subject to the FRA requirement for follow-up drug and alcohol testing.

The Organization has challenged Carrier's disciplining of Claimant on the basis of perceived procedural irregularities as well as the merits.

At the outset, the Organization argues that Claimant was not accorded a fair and impartial hearing because Carrier's decision to dismiss Claimant from service was rendered before the Officer who issued the discipline had an opportunity to review the transcript. According to the record, the letter of dismissal was written on May 15, 1995, whereas it appears the transcription did not commence until thereafter, or, more precisely, until May 16, 1995.

First Division Award No. 24874 (without Referee); Award Nos. 23, 25 and 26 (Eickman) and Award No. 32 (Lynch) of Public Law Board No. 5912; Award No. 57 of Public Law Board No. 5390 (Fisher); and Award Nos. 74 and 79 (Lieberman) and Award Nos. 88 and 90 (Lynch) of Public Law Board No. 4897, all of which are cited by the Organization, support the concept on this property that a fair and impartial hearing demand that reasonable consideration of the transcript be made prior to assessment of discipline.

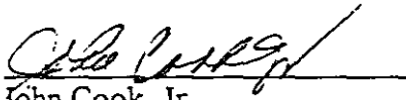
Since it is clear that the Officer of the Carrier who rendered the discipline did so prior to receiving and reviewing the hearing transcript, the procedural objection raised by the Organization on this issue has substance and gives the Board cause to set aside the discipline,

which is in keeping with previous awards on this property involving the identical subject.

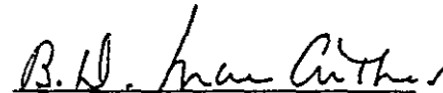
Having so concluded, the Board need not address the additional procedural questions raised by the Organization, nor shall we review the case on its merits.

AWARD: The claim is sustained.

ORDER: The Carrier is instructed to comply with this Award within 30 days of the date hereof


John Cook, Jr.
Chairman and Neutral Member


D. J. Gonzales
Carrier Member


B. D. MacArthur
Employee Member

Dated at Portland, Oregon this 26th day of February, 1999.