

PUBLIC LAW BOARD NO. 6375

Case No. 1

Award No. 1

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1) The Agreement was violated when the Carrier improperly terminated the seniority of Speed Swing Operator F. T. Lopez on March 13, 1998 (Carrier’s File 1138381 SPW).**
- 2) As a consequence of the violation referred to in Part (1) above, Speed Swing Operator F. T. Lopez shall now be returned to service, compensated for all wage loss suffered commencing March 20, 1998 and compensated for the one (1) week of vacation he observed in February, 1998.”**

FINDINGS:

This Board, after hearing upon the whole record and all the evidence finds that the Carrier and the Organization involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Claimant was notified of the hearing held before this instant Public Law Board. The Organization strongly appealed before this Board and on property both the Carrier’s errors in procedure and the merits related to the circumstances surrounding the Claimant’s absence from work.

From February 13, 1998 to February 26, 1998, the Claimant observed his two week vacation. Claimant returned to work on February 27, 1998. The Organization argues that while the Claimant was on his way to work on March 3, 1998, his car broke down. This was reported to his supervisor and resulted in two work days lost while car repairs were made. Immediately thereafter, on March 6, 1998, the Claimant became seriously ill, but had his daughter call the Carrier to report his absence. The Organization maintains that his doctor released him to return to work on March 19,

1998, but when the Claimant called his supervisor to return to work, he was advised that he was out of service.

It is the position of the Organization that the Carrier violated the Agreement in removing the Claimant from service. It failed to properly apply Rule 33(d) on sick leave; properly and with "accuracy" fulfill the provisions of Appendix "R"; and procedurally respond to the Claimant's request for an investigation in a timely manner. The Organization argues that on both procedural grounds and merits, the Claimant was not afforded his rights under the Agreement and was given harsh discipline for an absence caused by severe illness.

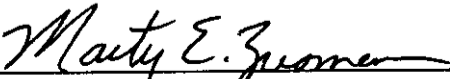
For its part, the Carrier denied any violation of the Agreement. The Carrier maintains that the notice from the Organization requesting a hearing pursuant to Appendix "R" was improperly addressed. When that notice was properly received by fax on April 20, 1998, a hearing was promptly scheduled. The Carrier denies any procedural error and holds to its position that it acted appropriately. The Claimant violated Appendix "R" and Rule 33 of the Agreement in failing to properly notify his supervisor and receive permission to be off work. The Carrier considers its discipline appropriate.

The Board finds no support for the procedural issues at bar. Nor does the on-property record support the Organization on merits. There is no probative evidence whatsoever, that the Claimant ever received or obtained authority to be absent. Even if a single call was made and a message left with an unknown Carrier employee, it was insufficient to satisfy the Claimant's responsibilities under the Agreement.


Appendix "R" is a self invoking Rule. Claimant's illness defense has no evidentiary support. Claimant was absent twenty-two (22) days without Carrier authority. In fact, the Board finds no evidence that the Claimant made any effort whatsoever, other than the one telephone call, to keep the Carrier informed, let alone to secure proper authority. And as for the discipline assessed, the Board takes note of the fact that this is the third time the Claimant had been disciplined for absenteeism. He must have been aware of his responsibilities in securing proper authority. We find no reason in this record to disturb the Carrier's actions and will not do so. The Claim is denied.

AWARD:

Claim denied.


Marty E. Zusman, Chairman
Neutral Member


R. B. Wehrli
Organization Member


D. A. Ring
Carrier Member

Date: 10-10-02