

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

INTERPRETATION NO. 1 TO AWARD NO. 24893

DOCKET NO. 44563

NAME OF ORGANIZATION: (Brotherhood of Locomotive Engineers)

NAME OF CARRIER: (Union Pacific Railroad Company)

On May 7, 1998, the First Division of the National Railroad Adjustment Board, with Peter R. Meyers sitting as the Neutral Referee, entered its Award 24893 in Docket 44563, which denied the claim seeking the Claimant's reinstatement to employment, back pay, and reinstatement of seniority and vacation rights. In Award 24893, the Board, while apparently unaware of the findings and holdings of an earlier Award relating to the same Claimant, bearing Award 24874, stated the following:

"Since the Claimant had a pending Level 4 discipline and this current Level 4 discipline, he reached Level 5. Level 5 discipline calls for permanent dismissal. The Claimant was aware that he was facing the possibility of discharge when he received his first Level 4. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment after this second Level 4 violation."

Despite the ruling of the National Railroad Adjustment Board on May 7, 1998, the Carrier reinstated the Claimant to service on that same date because the effect of Award 24874 on Award 24893 was to reduce the Level 5 discipline (permanent discharge) to a Level 4 discipline (30-day suspension). The Carrier, however, has refused to pay the Claimant any backpay beyond the original 30-day suspension for the additional time period that the Claimant was off on a discharge. The Carrier has defended its refusal to pay additional backpay on the basis that the Claimant's Federal Railroad Administration Certification was revoked.

The Claimant had been dismissed on September 19, 1995. The record reveals that the FRA regulation required, at the very most, that the Claimant's certification be revoked for a period of one year. Section 240.117(g)(3) states, in part:

"(ii) In the case of two separate incidents involving violations of one or more of the operating rules on practices described in paragraph (e) of this section that occurred within thirty-six months of each other, the person shall be ineligible to hold a certificate for a period of one year."

The Organization claims that the Carrier, at the very least, owes the Claimant backpay from September 19, 1996, to his reinstatement on May 7, 1998. The Organization argues that the period of revocation could have been reduced to six months and it is very possible that the Claimant is entitled to backpay from March 19, 1996, to May 7, 1998.

The parties were unable to resolve the dispute over the backpay owed to the Claimant, and the Organization filed a civil action in the United States District Court. The parties subsequently filed a joint motion for Order of Remand, which was granted on March 30, 2000. The parties agreed that:

"The issue on remand would be limited to the NRAB determining whether and to what extent NRAB Award No. 24874 may have a bearing on the appropriate level of discipline for the safety rule violation that was upheld in Award No. 24893. It is understood that BLE does not challenge, and the remand would not encompass, the NRAB's basic finding in Award No. 24893 that Mr. Revenbergh committed the Level 4 violation at issue in that Award."

The Organization argues that the failure to pay the backpay to the Claimant indicates that the Claimant is being disciplined for a Level 4 offense well beyond the 30-days permitted for such an offense under the Carrier's unilaterally imposed Rules. The Organization contends that the only thing beyond the normal 30-day assessment for the speeding offense would be the one-year revocation period for the Claimant's license. Consequently, the Organization contends that the issue be resolved so that the Claimant be provided with additional backpay, either from March 19, 1996, to May 7, 1998, or from September 19, 1996, to May 17, 1998.

The Carrier contends that the Claimant's dismissal should be properly considered a lengthy suspension without pay. The Carrier contends that the Board should hold that the Wesman case did not hold that the Claimant did not violate the Rule and cause a collision. The Carrier argues that it would be a travesty to give any backpay on the Claimant's clear violation of the Rules. The Carrier also points out that the Claimant's license was revoked for one year because of the August 23, 1995, violation. The Claimant did not appeal that revocation, and there certainly should be no backpay for the period of revocation.

The Board has reviewed all of the evidence before us in this remand, and we find in light of the ruling in Award 24874, which sustained the claim and removed the Level 4 discipline in that case, the discipline administered in Award 24893 could only have been a 30-day suspension. Hence, the Claimant is entitled to backpay for the period after that suspension. However, since the Claimant had his license revoked and said revocation was for a period of one year, the Board orders that the Claimant shall receive backpay for the period from August 23, 1996, to May 7, 1998.

With respect to any set off against that backpay resulting from any interim earnings that may have been earned by the Claimant, the Board finds that there is no basis for it in the record.

Referee Peter R. Meyers who sat with the Division as a neutral member when Award 24893 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 4th day of April, 2002.