

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 24987  
Docket No. 44668  
99-1-97-1-U-1979

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

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

**STATEMENT OF CLAIM:**

“Claim of Engineer M. E. Byrd for reinstatement and compensation for all lost time associated with the Carrier’s assessment of Level 4, (Cumulative Level 5, permanent dismissal) under the Carrier’s ‘Upgrade’ Discipline Policy. The Organization further requests the clearing of Engineer M. E. Byrd’s employment record of all notation of this disciplinary action.”

**FINDINGS:**

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant was dismissed by the Carrier on August 20, 1996 as a result of an Investigation held on August 15, 1996. The Carrier found that Claimant had violated Operating Rules 5.15, 9.4 and 9.5 on July 24, 1996.

The facts in this case are clear. On July 24, 1996 Claimant was working as Engineer on assignment MENL-24. At approximately 10:20 P.M. Carrier Officers performed an efficiency test on the Claimant's train. The Carrier officers darkened the signal at MP 335.7. The officers had shunted the previous signals to indicate the Claimant might have to stop the train. Claimant reduced the train speed, but after the dark signal was seen Claimant was unable to stop the train until it had gone approximately three engine lengths past the signal. Claimant admitted so at the Investigation.

On July 1, 1994 the Carrier implemented a new "Upgrade Discipline Policy," a copy of which was not furnished this Board. After an incident the Claimant's previous 36 month discipline level is reviewed. The levels of discipline apparently are from 0 to 5. A level 5 discipline is dismissal, and a combination of previous discipline along with the current incident determine what discipline will be assessed.

In this case Claimant had been disciplined on January 13, 1995 for a violation of running a red signal. That was a level 4 discipline and Claimant was suspended for 30 days. On April 18, 1996 Claimant was disciplined for the misuse of the Carrier's telephone card, a level 2 offense. At the time of the incident in this case Claimant was at level 4. Therefore any offense of any kind, even a level 1, would require dismissal. The offense in this case standing alone would warrant a level 4 discipline, ergo Claimant was dismissed.

The Organization argues the Carrier violated Section 3 of the System Discipline Rule. Section 3 reads as follows:

- "3. Within 10 days of the time the appropriate company officer knew or should have known of an alleged offense, the engineer will be given written notice of the specific charges against him or her. The notice will state the time and place of the investigation and will be furnished sufficiently in advance to allow the engineer the opportunity to arrange for representation by a BLE representative(s) (the BLE Local Chairman or other elected BLE Officers) and witnesses. The notice will propose discipline to be assessed if investigation is waived and designate a carrier officer who may be contacted for the purpose of arranging for an informal

conference on the matter. A copy of the notice will be furnished to the BLE Local Chairman."

It argues the notice did not indicate the discipline to be assessed if the Hearing were to be waived. The Carrier argues that Claimant knew, if found guilty, the discipline was dismissal. Obviously, Claimant would not waive the Investigation.

The Organization argues that the discipline assessed was unduly harsh. Claimant had 18 years of service at the time of the incident. Claimant's license to operate a locomotive was revoked for period of one year.

It has long been established that the Carrier has the right to implement rules governing the conduct of its employees, so long as such rules are not arbitrary, capricious or unduly harsh. The Board finds the action of the Carrier in this case to be unduly harsh. Accordingly, the discipline will be reduced to a one year suspension which coincides with Claimant's license revocation. Claimant will be reinstated and allowed pay for time lost except for the one year period of the suspension.

### AWARD

Claim sustained in accordance with the Findings.

### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Dated at Chicago, Illinois, this 23rd day of March 1999.