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**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

**Award No. 24998**

**Docket No. 44643**

**99-1-97-1-U-1968**

The First Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

**STATEMENT OF CLAIM:**

"Claim of Engineer G. D. Colbert that the level 1 discipline be removed from his record, and that he be paid for all time lost."

**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.

On November 1, 1996, Claimant received a Notice of Investigation concerning his allegedly missing a call for KVL1-23 at approximately 12:07 a.m. on October 24, 1996. The Investigation was held on December 30, 1996, and by notice of January 6, 1997, Claimant was informed that he had been assessed a Level 1 grade of discipline under the UPGrade Discipline Policy.

The Carrier maintains that it called Claimant at his home (his primary number) and on his pager (his secondary number) eight times in 30 minutes to no avail. Because Claimant did not respond to the calls, Carrier asserts that he was in violation of Carrier Rule 1.15: Duty — Reporting or Absence. That rule reads as follows:

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority.

The Organization insists that Claimant was never called by the proper name. It notes that both the answering machine messages at his home and the pager voice message referred to T. A. Lincoln -- a conductor -- and not to Claimant. Moreover, the Organization notes that when Claimant called the AVR system, and he was not listed on the system, nor was the train at issue shown to be called. Finally, Claimant testified that, had Carrier used the usual code of 1-800 on his pager, instead of T. A. Lincoln's name, he would have called CMS immediately.

The Carrier has suggested that Claimant was being purposely obtuse when he failed to ascertain that a call for the conductor was actually meant as a call for him. Claimant has testified credibly, however, that there was a prearranged code which would have alerted him to call CMS. For reasons not clear on this record, Carrier declined to use that code and, instead left a voice mail message for T. A. Lincoln. Under the circumstances, the Carrier has failed to carry its burden of persuasion. Accordingly, the instant claim is sustained.

### AWARD

Claim sustained.

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**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 2nd day of June 1999.