

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 26046
Docket No. 45931
04-1-02-1-U-3162

The First Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of Engineer B. W. Deatherage, for removal of Discipline, claiming all lost time (including time attending the investigation), fringe benefits, and clearing this notation of discipline from Engineer Deatherage’s record.”

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 June 29, 2001, the Claimant received a Notice of Investigation in connection with the charge that he had falsified certain payroll information while working as Engineer on LSR32 on June 18 and 19, 2001. Specifically, the Carrier alleged that he had dishonestly claimed engine prep time on the dates in question.

The Investigation convened on July 18, 2001 and it concluded on July 19, 2001. By notice dated July 28, 2001, the Claimant was informed that he had been assessed a Level 5 grade of discipline – dismissal - in accordance with the Carrier’s UPGRADE

discipline policy. The Organization appealed the discipline and the Claimant was reinstated by the Carrier on December 5, 2001. At issue before the Board is whether there is a basis to sustain the claim in its entirety, thereby awarding the Claimant backpay for time lost, as well as restoring all contractual benefits and clearing the notation of discipline from the Claimant's record.

The record in this case is indeed voluminous and we have reviewed it carefully. Among the arguments raised by the Organization during the on-property handling is the contention that the Carrier omitted the date the Investigation transcript was completed by the transcriber, thereby avoiding the question of whether the transcript was properly reviewed before discipline was issued in this case.

The Organization's objection is well-founded and determines the result in the instant claim. As noted in First Division Award 25987, "... Carrier's refusal to submit evidence of when the transcript was prepared permits the inference that the evidence, had it been produced, would not have been favorable to the Carrier. On that basis, we must conclude that the Claimant was denied a fair and impartial Investigation in accordance with the Agreement." Also see, First Division Awards 25989 and 25988.

Consistent with the Board's reasoning and logic in the cited cases, we find that the Claimant was not afforded a fair and impartial Investigation and the claim must be sustained in its entirety on that basis.

AWARD

Claim sustained.

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 July 2004.