

PUBLIC LAW BOARD NO. 4450

AWARD NO. 80
NMB CASE NO. 80
UNION CASE NO 09166D
COMPANY CASE NO 1017821

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY
(Western Region)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

"In accordance with the System Discipline Agreement between the Union Pacific Railroad and the Brotherhood of Locomotive Engineers, I am respectfully appealing the Level 4 Upgrade discipline assessed to Engineer L. G. Clemens, and request the expungement of discipline assessed and pay for all time lost with all seniority and vacation rights restored unimpaired.

OPINION OF BOARD: Engineer L. G. Clemens (Claimant) established seniority as a Switchman/Brakeman on the Oregon Second District in May 1978 and as an Engineer in November 1992. At the time this matter arose in June 1996, Claimant had no disciplinary record under the UPGRADE Policy (in Award 81, this Board reversed a Level 4 Upgrade discipline which Carrier had imposed on Claimant in February 1996, thus restoring him to a clean record as of the date of the instant case).

On June 17, 1996, Claimant worked as Engineer on train YBA66-17 at Barnes, Oregon. At approximately 1900 hours, Engineer Clemens felt a particle of foreign material enter his right eye. He thought he had removed whatever it was and continued working without mentioning or reporting the incident. After completing his shift, however, Claimant did not sleep well due to a persistent irritation in his right eye. On the morning of June 18, 1996 he went to Dr. John P. Kundle, in

Vancouver, Washington, who removed a particle of rust from the center of his right eye and prescribed a salve to prevent infection.

Immediately after seeing the doctor, Claimant reported the injury to Carrier managers at approximately 2.30 pm on June 18, 1996. Three days later, he was notified to attend an investigation into charges that he violated the following Carrier rules:

1.2.5 Reporting

All cases of personal injury, while on duty or on company property, must be immediately reported to the proper manager and the prescribed form completed.

A personal injury that occurs while off duty that will in any way affect employee performance of duties must be reported to the proper manager as soon as possible. The injured employee must also complete the prescribed written form before returning to service.

If an employee receives a medical diagnosis of occupational illness, he or she must report it immediately to the proper manager. The Medical Department will review the report to determine if it is work related.

System Special Instructions Effective 0001 Monday June 1 1998 SSI Item I O-A. 1.2.5 Reporting

Add:

If an employee receives a medical diagnosis of occupational illness, the employee must report it immediately to the proper manager

1.1.3 Accidents, Injuries, and Defects

Report by the first means of communication any accidents; personal injuries, defects in tracks, bridges or signals; or any unusual condition that may affect the safe and efficient operation of the railroad. Where required, furnish a written report promptly after reporting the incident.

1.1 Safety

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.

Following the hearing, Carrier found Claimant guilty as charged and imposed Level 2 discipline. Because he was already at Level 4 due to the February 1996 disciplinary action which this Board subsequently reversed in Award 81, Carrier imposed another Level 4 and assessed another thirty (30) day suspension in the instant case. Careful consideration of the facts and circumstances

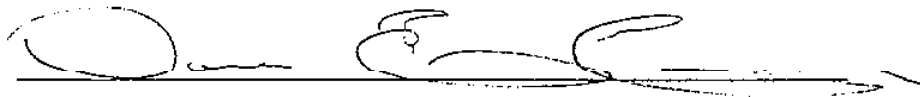
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of this case persuades us that Claimant complied fully with his responsibility to Carrier under the cited rules. The findings of Carrier management that he violated those rules simply are unsupported by the facts of record. Accordingly, the disciplinary action was unwarranted and must be set aside. Carrier is directed to restore his UPGRADE record to Level 2 and to reimburse him for the thirty (30) days he was unjustly suspended.

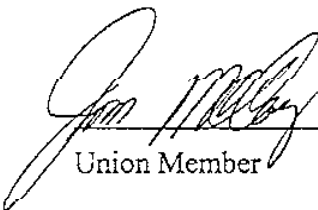
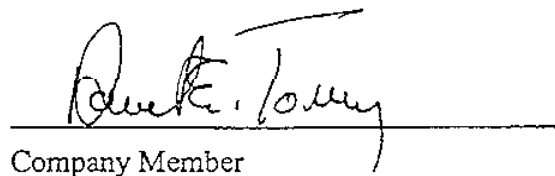
AWARD

- 1) Claim sustained.
- 2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.



Dana Edward Eischen, Chairman

Dated at Spencer, New York on September 24, 1998


Union Member
Company Member