

PUBLIC LAW BOARD NO. 4450

AWARD NO. 90
NMB CASE NO. 90
UNION CASE NO. 02234D
COMPANY CASE NO. 9400730

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY
(Western Region)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Appealing the UPGRADE Level 2 Discipline of Engineer D. R. Hemmer and request the expungement of discipline assessed and pay for all lost time with all seniority and vacation rights restored unimpaired. Action taken as a result of investigation held October 10, 1994.

OPINION OF BOARD: On August 17, 1993, Engineer D. R. Hemmer ("Claimant") was the Engineer on the NPMIV-15 when the inside switch at the west end of Radum, California was run through during switching operations. By letter of August 18, 1993, Carrier ordered the Claimant to report to the Superintendent's Conference room, 833 East 8th Street Stockton California at 10:00 AM on August 21st for formal investigation and hearing. With mutual consent, the hearing was postponed until September 30, 1993 at 9:00 AM where it was held and completed. In the letter of October 19, 1993, the Carrier advised Claimant he had been assessed Upgrade Discipline level 2, even though it is undisputed that the Waiver Form, which Claimant declined to sign, had proposed only a Level 1 UPGRADE discipline for Claimant's alleged violation of Rules 104A, 105, 106 and 520.

We shall sustain this claim due to fatal procedural violations by Carrier's local managers, on the grounds set forth in the Organization's initial appeal of the Level 2 disciplinary action:

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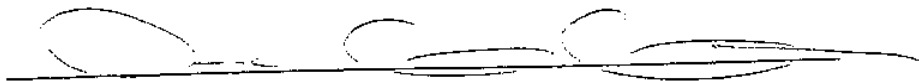
Under the Upgrade discipline policy, the manager who calls the investigation will not conduct the investigation. In reviewing the transcript, it revealed the [sic] not only did Mr. Smith, manager terminal operations Stockton, call for this investigation he conducted it as well, this according to the Upgrade discipline policy was and is improper.

...it should be noted at this time that Mr. Hemmer was offered a level (1) waiver [sic] prior to the investigation, which he elected to have the investigation rather than sign for this level of discipline. According to the discipline policy, if the charges against Mr. Hemmer were sustained, Mr. Hemmer should have not received any discipline any higher than that offered. In your letter you assessed Mr. Hemmer a level (2). This is improper according to this policy..

AWARD

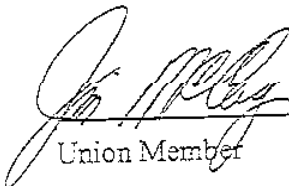
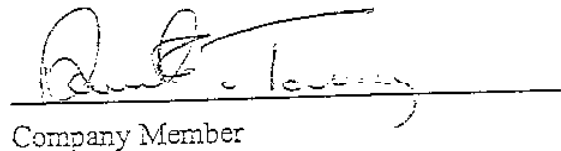
1) Claim sustained.

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 May 7, 1999


Union Member
Company Member