

CARRIER FILE - 9100989
ORGANIZATION FILE - PR-HOVERSON RD

PUBLIC LAW BOARD NO. 5719

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY)	
(WESTERN REGION))	
)	NMB CASE NO. 3
VS)	AWARD NO. 3
)	
BROTHERHOOD OF LOCOMOTIVE ENGINEERS)		

STATEMENT OF CLAIM:

Request expungement of 31-day actual suspension of Engineer R. D. Hoverson and pay for all time lost.

FINDINGS AND OPINION

The Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved.

The parties to this dispute were given due notice of hearing thereon.

Claimant in this dispute was notified to report for an investigation on October 10, 1990 on charges that he "failed to remain marked up with CMS to make your agreed upon miles of 3200 to 3800 per checking periods January 1990 through September 1990."

The basis for these charges is a letter dated January 4, 1990 to claimant from Mr. G. D. Middleton, Manager Operating Practices, which reads in part as follows:

"This letter refers to your unacceptable lay-off record which contains an excessive amount of laying off sick.

"On June 15, 1989, before your return to service after the doctor's report, you were counselled about your lay-off record in my office in the presence of BLE Local Chairman W. B. Hulse. At that meeting, you were clearly informed that your work record was unacceptable and unreasonable. You agreed that you would remain marked up and would make 3200 - 3800 miles per checking period as evidence of your willingness to work for the Union Pacific on a full-time basis.

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"Since the date of our conference, you have not remained marked up as would be expected of a reasonably healthy individual. During the time period from June 15, 1989, when you were marked up, until November 1, 1989, when you were again withheld from service for another physical, you laid off sick 20 times and averaged 2290 miles per checking period.

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For this record the Board notes that while Mr. Middleton states there was an "agreement" that claimant would make between 3200 and 3800 miles per checking period, during the course of the investigation both the claimant and his representative (who also attended the meeting in Mr. Middleton's office) deny that there was an "agreement" involved.

It is the opinion of this Board that Carrier's Manager Operating Practices does not possess the authority to amend the existing rules and working conditions agreement by imposing or attempting to impose standards such as those here involved. If it is Carrier's desire to create a rule imposing minimum miles each month for its Engineers, it can only do so by agreement with the Organization, not by edict.

Inasmuch as claimant was charged with failure to comply with an illegally imposed minimum standard, it is obvious that he cannot be found guilty of violating Rules A, B and 600 of the General Code of Operating Rules, Second Edition, effective October 29, 1989.

The Board would be remiss in its obligations if it did not note that claimant here is building an unenviable record of laying off sick and would urge that he take whatever remedial action is necessary to correct this problem. Carrier does have the right to expect its employees to be available for service and employees who are constantly laying off create problems for the railroad and for their fellow employees who must count on them to carry their fair share of the work load.

Based on the record before us, we find that Carrier erred when it sustained the charges against claimant and assessed him with a 31-day suspension from service, which, in turn, required that he also serve a deferred 15 day suspension previously assessed. Claimant was actually erroneously suspended from service for 46 days.

AWARD

Claim sustained. Carrier is instructed to comply with this award within 30 days of the date hereof.

F. T. Lynch
F. T. Lynch, Neutral Chairman

D. J. Gonzales
D. J. Gonzales, Carrier Member

R. E. Dean
R. Dean, Employee Member

Award date: June 28, 1995