

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY  
AND  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

STATEMENT OF CLAIM:

*"Request the removal from the record of engineer L. Knight the level 1 discipline and any other penalties associated with this discipline.*

FINDINGS:

On October 5, 2004; November 4, 2004; November 5, 2004; November 6, 2004; November 7, 2004; November 14, 2004; November 15, 2004; November 18, 2004; November 30, 2004; December 1, 2004; December 2, 2004, December 3, 2004; December 25, 2004, and December 26, 2004, Engineer Knight laid off sick.

On January 10, 2005, Carrier mailed Engineer a certified letter advising:

*"You are hereby notified to be present in the conference room, 5245 River Road, Avondale, LA on January 20, 2005 at 3:00 p.m. for a formal investigation.*

*The purpose of this investigation is to develop the facts and determine responsibility, if any, in connection with your alleged violation of the Union Pacific Attendance Policy effective January 15, 2004, as a result of your alleged failure to protect employment by excessively absenting yourself from service as noted on the attached work history, between October 1, through December 31, 2004, while employed as an engineer with the Union Pacific Railroad.*

Formal investigation was postponed by mutual agreement and convened on February 15, 2005. After reading transcript of investigation, Carrier found Engineer Knight responsible for violation of GCOR 1.13 – Reporting and Complying with Instructions; and GCOR 1.15 – Duty - Reporting or Absence. Upon a finding of responsibility, Engineer Knight was assessed discipline at Level 1.

Discipline was appealed and denied in accordance with labor agreement. Partisan parties have been unable to resolve this dispute on property, and it comes, now, before this Board for final and binding adjudication.

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During investigation Organization raised procedural objection claiming Carrier was alleging violation of Rule 1.13 – Reporting and Complying with Instructions, though Engineer Knight was not so charged in caption of investigation.

Hearing Officer conceded Engineer Knight had not been charged with violating Rule 1.13 when he stated:

*“However, Mr. Knight is not really charged with Rule 1.13. It is mentioned in EXHIBIT “A” as the General Code. And, like I say, this will be considered at appropriate time and we’ll - - but we’ll mark it as EXHIBIT “E”, even though he’s not charged with that rule and there’s no discipline assessed.”*

After investigation Carrier issued letter of discipline dated February 25, 2005; letter stated:

*“Your actions are in violation of the Union Pacific Attendance Policy and General Code of operating Rules 1.13 and 1.15 as adopted and modified by Union Pacific Railroad.”*

OPINION OF THE BOARD:

We have read the entire record, heard oral arguments, and evaluated positions taken by both parties. We find credence in Organization’s claim that Engineer Knight was not properly and fully advised in letter of notification of charges against which he would be required to marshal a defense. The basic principle that proper notice is a fundamental right without which there can be no fair hearing has been repeatedly confirmed by this Board and others.

In the case before us, Carrier acknowledged Engineer had not been charged with violating Rule 1.13; notwithstanding that acknowledgement, Carrier went on to find Engineer Knight responsible for its violation.

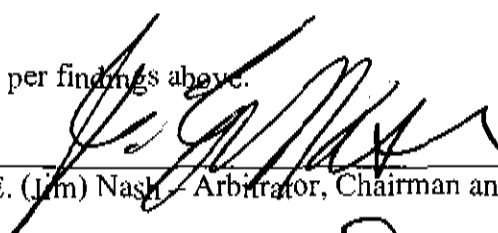
Failure to provide proper and sufficient notice is per se a fatal defect which nullified the formal investigation. Finding Engineer Knight responsible for violating a rule with which he was not charged further compromised the integrity of the disciplinary process.

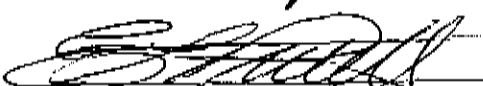
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The Board is unable to get to the merits of this case because of a fatal procedural flaw; this dispute will be resolved in favor of the Organization on that basis.

AWARD:

Claim is sustained per findings above.

  
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J. E. (Jim) Nash - Arbitrator, Chairman and Neutral Member

  
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Employee Member, Mr. Lee Pruitt  
Brotherhood of Locomotive Engineers &  
Trainmen

  
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Carrier Member, Mr. Randy Weiss  
Union Pacific Railroad Company

July 27, 2005