

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 G. D. Colbert the level 1 discipline and any other penalties associated with this discipline.

FINDINGS:

On October 2, 2004; October 11, 2004; October 15, 2004; October 16, 2004, October 17, 2004; October 23, 2004; October 24, 2004; October 30, 2004; November 17, 2004; November 26, 2004; November 28, 2004; November 29, 2004; December 3, 2004; December 9, 2004, December 10, 2004; and December 11, 2004, Engineer Colbert either laid off sick, was in missed call status or was on excessive personal leave.

On December 13, 2004, Carrier mailed Engineer Colbert a certified letter advising:

"You are hereby notified to be present in the conference room, 550 Lindberg Street, Beaumont, TX on December 21, 2004 at 2:00 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 12, 2004, while employed as an engineer with the Union Pacific Railroad.

You are charged with responsibility which may involve a violation of the General Code of Operating Rules 1.13, and 1.15 as adopted and modified by Union Pacific Railroad.

Formal investigation was postponed by mutual agreement and convened on January 5, 2005. After reading transcript of investigation, Carrier found Engineer Colbert responsible for violation of GCOR 1.13 – Reporting and Complying with Instructions;

PLB 6833
CASE NO. 22
AWARD NO. 22

and GCOR 1.15 – Duty - Reporting or Absence. Upon a finding of responsibility, Engineer Colbert 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.

During investigation, interested parties engaged in a long and emotional debate on whether and how mileage, days worked or total compensation affected employee's ability to legitimately layoff work without penalty. Not surprisingly, they were unable to arrive to an agreement.

Formal investigation was briefly recessed; during recess, Organization overheard hearing officer and Carrier witness in an ex parte discussion involving Engineer Colbert's pay stub, and his compensation for the first half of the month. Immediately after formal investigation was re-convened, Organization raised an objection on grounds of bias and partiality, and requested cancellation of formal investigation, with Engineer Colbert's return to work. Carrier witness acknowledged the ex parte conversation; hearing officer intervened and noted the Organization's objection, but denied Engineer Colbert's position had been prejudiced.

OPINION OF THE BOARD:

Upon reading the entire record and listening to the arguments on both sides, we are persuaded by the Organization's argument that Carrier showed partiality and bias when - during recess – hearing officer and charging officer held an ex parte conversation relative to the issue in dispute.

In reading and analyzing transcript of the investigation, we see a connection between the ex parte discussion and the tone and tenor of direct examination of charging officer after investigation re-convened. Hearing officer's explanation that an innocuous conversation concerning Engineer Colbert's pay stub and the amount of money he earned during first half of the month came up while making copies has the ring of incredulity.

In the judgment of this Board, it is difficult to find any proper or reasonable justification for the hearing officer and charging officer to involve themselves in such a conversation.

PLB 6833
CASE NO. 22
AWARD NO. 22

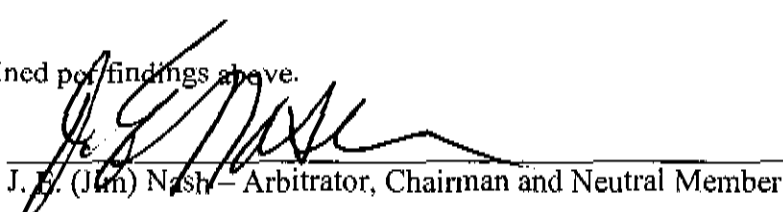
The Carrier is in charge of these proceedings; that imposes upon it – in order to preserve the integrity of the disciplinary process – the duty to go out of its way to avoid even the appearance of partiality or impropriety. Any question or discussion having to do with the dispute at issue could easily have been handled in open forum and made a part of the evidence of record.

The rule of due process forbids Carrier conduct described in Engineer Colbert's formal investigation. Such behavior destroyed the hearing and nullified discipline assessed. For that reason, we are unable to consider merits of this dispute, and there is no need to discuss them, here.

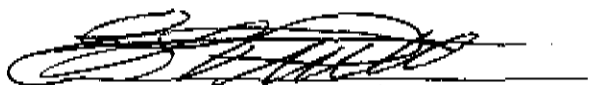
We find in favor of Organization.

AWARD:

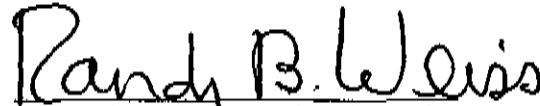
Claim is sustained per findings above.



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



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



Carrier Member, Mr. Randy Weiss
Union Pacific Railroad Company

July 27, 2005