

PARTIES TO DISPUTE:

**UNION PACIFIC RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEER AND TRAINMEN**

STATEMENT OF CLAIM:

“Request the removal of level 2 discipline from the record of engineer J.B. Veillon with him being made whole, which includes but not limited to lost earnings, all vacation rights, cobra payments and any other penalties associated with this discipline.”

FINDINGS:

On September 25, 2003, Carrier mailed Engineer J. B. Veillon a certified letter, alleging excessive absenteeism and failure to follow instructions. Letter read as follows:

“You are hereby instructed to report to the conference room, 550 Lindberg Street, Beaumont, TX, on October 3, 2003, at 1:00 p.m. for a formal investigation to develop the facts and determine individual responsibility, if any, in connection with your alleged failure to comply with instructions directing you to minimize absences from work and meet the employment requirements of your assignment. This alleged incident occurred while working as Engineer between the periods June 25, 2003 and September 22, 2003 at Beaumont, TX.

This investigation will be conducted in conformity with the applicable schedule agreement, and you are entitled to representation as provided in that agreement. You are entitled to representation and witnesses as provided for in your agreement.”

After mutually agreed upon postponement, formal investigation was convened on October 22, 2003. After reading transcript of investigation, Carrier found Engineer Veillon, responsible, as charged. Upon a finding of responsibility, Engineer Veillon was assessed Level 2 discipline.

Discipline was timely appealed 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 the investigation, Carrier Charging Officer introduced into evidence an attendance calendar indicating Engineer Veillon was absent 15 of 91 workdays during period in question.

During cross-examination, Organization queried Carrier Charging Officer as to whether he had formally counseled Engineer Veillon - with advice to his Local Chairman - prior to making formal allegation of excessive absenteeism, and in order to determine if there were extenuating circumstances or if Engineer Veillon could provide a valid reason for alleged poor work attendance. Charging Officer responded in the negative, adding:

"I talked to James about the problem one time before at Kinder, and I called him at his house a couple of times. Now, for me to tell you exactly what time I spoke to him about it, I could not do that."

Later, in responding to Organization's question as to whether he had followed Carrier's policy for moving ahead with allegations of excessive absenteeism, Charging Officer responded:

"Reading from your number 5, it was not followed 100%."

OPINION OF THE BOARD:

This Board has carefully reviewed the pertinent agreements, policies, and the decisions of attached Arbitration Awards. We have, also, given full consideration to the written and oral briefs presented by both parties.

The Organization's chief concerns were Carrier's published policy on absenteeism, and its alleged inconsistency with the schedule of agreement; the method by which the Carrier determines whether an employee has adequately protected his job assignment; and whether the Carrier has followed its own published policy.

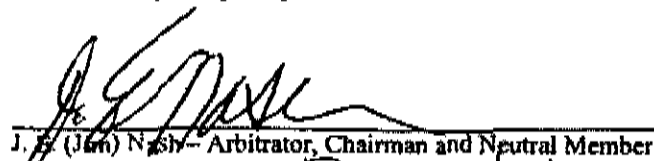
The Organization complained that it never agreed to the Carrier's policy on absenteeism, and that in implementing such a policy, Carrier attempts to achieve by fiat those things it was unable to accomplish through negotiation. Organization insisted, also, that the method by which Carrier determined employee availability was both flawed and inaccurate since an employee could be counted 'absent' on days he actually worked.


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Given the evidence of record – particularly Carrier’s acknowledgement it was out of compliance with its own published policy – we find the assessment of discipline to be capricious and arbitrary; accordingly, it must be set aside.

AWARD:

Claim sustained per findings above. Carrier is directed to remove discipline from Engineer Veillon’s record and to compensate him for lost earnings within thirty (30) days of execution of this award by majority members of this Board.


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
April 25, 2006