

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEER AND TRAINMEN

STATEMENT OF CLAIM:

"Request the removal of second offense violation of Union Pacific's Attendance Policy, from the record of engineer S. A. Rohal 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 January 21, 2003, Carrier mailed Engineer Rohal a certified letter, advising:

"You are hereby notified to be present in SoSan Conference Room, 1711 Quintana Road, San Antonio, TX at 14:00 pm, January 26, 2004 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 continued failure to protect employment is allegedly evidenced by excessive absences from work between October 22, 2003 and January 20, 2003 while employed as engineer with Union Pacific Railroad.

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

You are entitled to representation and witnesses in accordance with agreement provisions. Any requests for postponement must be submitted in writing sufficiently in advance of the scheduled hearing including reasons, therefor, to the undersigned.

Pursuant to the BLE Agreement, you are advised that the disciplinary assessment for the alleged may result in a finding of "Second Offense" under the Company's Attendance Policy. Should you wish to waive this hearing, Stan Coupe 210-921-4172 may be contacted to arrange an informal conference prior to the investigation."

Formal investigation was convened, as scheduled, on January 26, 2004. After reading transcript of investigation, Carrier found Engineer Rohal responsible for "Second Offense Absenteeism" and a discipline letter so stating was added to his personal record. Discipline was advanced - without resolution - to highest-level officer of appeal. This dispute comes, now, before this Board for final and binding adjudication.

During formal investigation, Carrier provided documentation indicating Engineer Rohal was absent a total of 29 days, 13 hours and 38 minutes during period in question, or put another way, he was unavailable for work 32.85% of the time.

Organization pointed out that 13 days of the 29 days for which Engineer Rohal had been formally charged included days for which he had either undergone surgery; was recuperating; or was, otherwise, under doctor's care. It emphasized that, at all times, Engineer Rohal had in his possession the required medical documentation to substantiate his illness; and, Carrier would have been provided such documentation had it bothered to follow its own policy by convening a formal conference - prior to advancing charges - for the purpose of determining whether Engineer Rohal could adequately explain his absenteeism.

Under cross-examination from Organization, Carrier witness acknowledged that had Carrier known of the nature of Engineer Rohal's illness; and had he been able to provide medical documentation, the absenteeism associated with his illness would not have been included in formal charges.

OPINION OF THE BOARD:

We have studied the entire record and heard oral arguments presented by both parties. Evidence of record makes it clear that Carrier was out of compliance with its own policy when it failed to convene a conference in which Engineer Rohal could provide an explanation for his absenteeism. By failing to follow established policy, any discipline assessed, there from, must be considered arbitrary and capricious and cannot stand.

We believe, also, that had Carrier subtracted the 13 days associated with Engineer Rohal's personal illness and rehabilitation - as acknowledged by its own witness - this dispute would not have been elevated to this level.


PLB 6833
CASE NO. 58
AWARD NO. 58

AWARD:


Claim sustained per findings above. Carrier is directed to implement this award within thirty (30) days of execution by majority Board members.



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

 4-25-06

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



Carrier Member, Mr. Randy Weiss
Union Pacific Railroad Company
April 25, 2006

CARRIER'S DISSENTS TO
PUBLIC LAW BOARD 6833
AWARD NO. 58

The Carrier dissents to this award. The majority erroneously concluded Claimant's rights were violated account "...Carrier was out of compliance with its own policy when it failed to convene conference in which Engineer Rohal could provide an explanation for his absenteeism."

The majority then concluded:

"By failing to follow established policy, and discipline assessed, therefrom, must be considered arbitrary and capricious and cannot stand.."

The TE&Y Attendance Policy, as enunciated by Superintendent Bulletin, and the language of the policy itself reads in pertinent part:

"It is expected that Union Pacific employees will protect their job assignments on a full-time basis.

In cases where an employee does not work full time, the following policy is applicable:

1. Employees who do not work full time will be identified. The identified employees work record will be examined to ensure the information is accurate. During this process, every effort will be made to identify those Employees who have legitimate reasons for their absences. If necessary, the supervisor will contact the employee to obtain additional information and/or clarify the available information. If the employees' attendance record warrants, an investigation will be held. If appropriate, discipline will be issued based on the results of the investigation." (Emphasis added.)

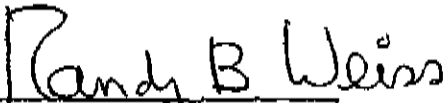
The text of the "Questions and Answers" section reads in pertinent part:

2. "Why have mandatory conferences been eliminated?

Conferences were often postponed by the Local Chairmen and the effectiveness of them is diluted when that happens. The employee would then get a false sense that his/her attendance did not really matter. If the Local Chairman or employee has information that they believe the manager should have, they can take the necessary steps to provide that information prior to any hearing."

The Carrier avers that conferences are optional rather than required by the bulletin/TE&Y Attendance Policy.

Based on all the foregoing, the Carrier respectfully dissents.


Randy B. Weiss
Carrier Member