

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 J. C. Zrzavy 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 July 12, 2004, Carrier mailed Engineer Zrzavy a certified letter, advising:

"You are hereby notified to be present at the conference room, 550 Lindberg Street, Beaumont, TX on July 20, 2004 at 1:00 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 continued failure to protect employment by excessively absenting yourself from service as noted on the attached work history and/or calendar during holidays, between September 1, 2003 through July 5, 2004, while employed as an engineer with 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 the Union Pacific Railroad.

You are entitled to representation and witnesses in accordance with agreement provisions. Any requests for postponements must be submitted in writing, including reason, therefor, to the contact manager.

Engineers Only. Pursuant to the BLE Labor Agreement, you are advised that the disciplinary assessment for these allegations may result in a finding of "Second Offense" under the Company's Attendance Policy.

After agreed upon postponement, formal investigation was convened on July 25, 2004. After reading transcript of investigation, Carrier found Engineer Zrzavy 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 witness testified Engineer Zrzavy was excessively absent between September 1, 2003 and July 5, 2004; and, absenteeism included a pattern of layoffs on holidays. Engineer Zrzavy was issued a "Second Offense" letter of discipline on September 3, 2004 for absenteeism covering period September 1, 2003 through July 5, 2004.

Organization pointed out that Engineer Zrzavy had been issued a "First Offense" letter of discipline on June 18, 2004, for absenteeism - also, included in period between September 1, 2003, and July 5, 2004. Organization complained that Carrier cannot discipline Engineer Zrzavy twice for the same offense.

Organization made the additional argument that Engineer Zrzavy had, in fact, worked on holidays identified by Carrier as part of "Frequent or Pattern of Holiday Layoffs."

OPINION OF THE BOARD:

We very carefully studied the transcript of investigation, exhibits and attachments, thereto. The record revealed that when Carrier decided to go back almost an entire year to formulate "Second Offense" charges, there was an overlap of dates for "First" and "Second" Offense allegations. We agree with Organization that Carrier cannot assess discipline twice for the same offense. For that reason, alone, discipline would have to be set aside.

The Board noted, too, that calendar evidence introduced by Carrier - and used, in part, as a basis for initiating charges and assessing discipline - concerning holiday layoffs was, factually, erroneous. Carrier cannot successfully make its case on evidence that is, factually, incorrect.


Carrier behaved unreasonably in assessing discipline as it did. Accordingly, discipline must fall.

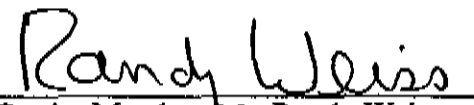
PLB 6833
CASE NO. 59
AWARD NO. 59

AWARD:

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


J. S. (Jack) 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