

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 R. G. Wells 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 June 22, 2004, Carrier mailed Engineer R. W. Wells a certified letter, advising:

"You are hereby notified to be present at the conference room, at 6800 Kirkpatrick Blvd. Houston, Texas at 9:30 a.m., Wednesday, June 30, 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 by excessively absenting yourself from service as noted on the attached work history from March 20, 2004 through June 18, 2004, while employed 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 postponements must be submitted in writing, including reason, therefor, to the undersigned.

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. Should you wish to waive this hearing, Ray Hancock at 713-671-0197, may be contacted to arrange an informal conference prior to the investigation.

After agreed upon postponement, formal investigation was convened on July 27, 2004. After reading transcript of investigation, Carrier found Engineer Wells 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 Wells had established a pattern of frequent layoffs, and a lower availability than other employees similarly situated. Carrier introduced documents showing Engineer worked 34 days out of a possible 91; and, in one instance, he layed off from April 28, 2004 through April 29, 2004 in order to keep a dental appointment.

Organization complained that the Attendance Policy is vague and ambiguous since it does not define crucial terms such as "frequent layoffs" or "lower availability." The employee, according to Organization, has no way of knowing, in advance, how his availability compares to the availability of others; thus, no opportunity to adjust behavior.

Organization, further, complained that Carrier published its Attendance Policy as being separate and distinct from its UPGRADE Discipline Policy. Yet, Carrier assessed discipline at Level 2 on December 22, 2003, for an alleged violation of its UPGRADE Discipline Policy between August 24, 2003 and November 22, 2003; but treated the alleged violation as a "First Offense" violation of its Attendance Policy.

Organization takes the position that Carrier cannot find Engineer Wells responsible for a "Second Offense" violation of its Attendance Policy, by treating the allegation made under its UPGRADE Discipline Policy as a "First Offense" violation of its Attendance Policy.

OPINION OF THE BOARD:

In evaluating Organization's argument that Carrier incorrectly and unfairly treated prior discipline assessed under Carrier's UPGRADE Discipline Policy as a "First Offense" violation of its Attendance Policy, we very studiously read both policies – in addition, of course, to all other exhibits and attachments that comprised the evidence of record. It is clear to this Board that the language in the Attendance Policy acknowledges that it is similar but outside the UPGRADE Discipline policy.

It is equally clear, in the case before us, that Carrier made no discernible distinction between the two policies in assessing a "Second Offense" violation of it Attendance

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Policy. Engineer Wells was, effectively, disciplined twice – once under each policy - for alleged excessive absenteeism between August 24, 2003 and November 22, 2003.

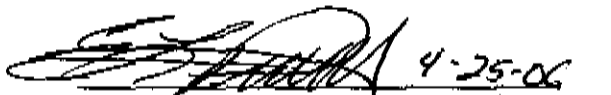
We have concluded that Carrier violated its own policy in assessing discipline as it did. Discipline resulting from Carrier's violation of its own policy must be considered arbitrary and capricious and cannot stand.

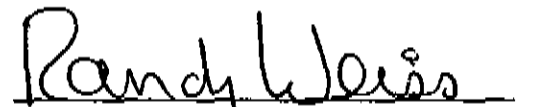
Since this dispute is resolved in favor of Organization on the basis of arbitrary and capricious application of published policy, we need not address other issues.

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