

SPECIAL ADJUSTMENT BOARD NO. 180

PARTIES TO THE DISPUTE:

UNION PACIFIC TRANSPORTATION CO.
(WESTERN LINES)
(Formerly Southern Pacific Transportation Company)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

Claim of Roseville Hub Engineer R.A. Miner for reinstatement to service of the Company with full seniority and all other employment rights restored and that he be compensated for all time lost in connection with Claimant's assessment of UPGRADE Level 5, Permanent Dismissal, on March 6, 2001. Further, Claimant's annual vacation rights should be restored, and he should be compensated accordingly. In addition, Claimant's personal record should be completely expunged of any notation or record pertaining to this case.

OPINION OF THE BOARD: Engineer R. A. Miner ("Claimant"), who was employed for more than 24 years by Carrier, was regularly assigned to pool freight service, home terminal Portola, California, when he was called on duty at 22:43 hours, to report at 23:59 for a "surprise" deadhead; *i.e.*, the deadhead was not listed on the Carrier's train lineup system, which is both in computer form and on Automatic Voice Telephone response. It is undisputed that Claimant had been socializing at a bowling alley and drinking beer while off-duty at his home terminal when he was "caught short" by the surprise deadhead call.

Claimant initially accepted the short call but then had afterthoughts about his condition for work. He then went to the depot at Portola to lay off, at approximately 23:20, some 39 minutes before he was to report for duty on the deadhead. It is noted that Carrier's Drug and Alcohol Policy is far-sighted in recognizing that such contingencies can occasionally arise, in that it provides, at

Section 2(c), Section II, as follows:

Voluntary Lay-Off

Union Pacific permits an off-duty employee subject to duty or called for duty to lay off with an admission that he or she is under the influence of alcohol except at the away from home terminal. However, if the privilege is abused, the employee may be referred to EA and may be subject to disciplinary action.

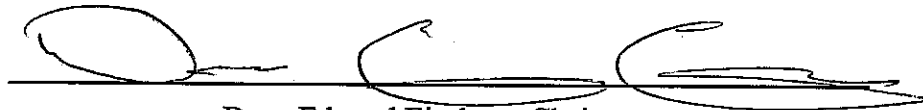
When Claimant entering^{ee} the depot at 23:20, he was observed by H. M. Dunn, Manager of Train Operations, who formed the opinion that Claimant may have been under the influence of alcohol. Claimant conceded that he had consumed "a few beers" and asked to mark off. MTO Dunn, who had been on duty some 23 straight hours due to snow emergency, rejected Claimant's request to lay off and ordered Claimant to remain at the terminal while a drug and alcohol tester could be summoned and then submit to a reasonable cause test. Claimant responded, in words or substance, that he was not yet on duty, declined to be tested and departed the property without waiting for the tester.

MTO marked Claimant in "IP" (investigation pending) status at 23:47 and subsequently filed charges that Claimant had allegedly violated Rule 1.6, "Conduct", Item 3, "Insubordinate", of the Union Pacific Railroad's General Code of Operating Rules effective April 2, 2000, and the Drug and Alcohol Policy, Section IX "Refusal to Permit testing". Following a formal investigation, carrier found Claimant guilty as charged and assessed the Level 5 discharge penalty under the Upgrade system. Claimant was not without fault in his insubordinate refusal to submit to the testing to which he was subject once he came on carrier's property. But given the overall facts and mitigating circumstances of this unique case, we conclude that it would be a travesty of injustice to uphold the discharge penalty on this record. In our considered judgement, this claim must be sustained to the extent of directing Carrier to tender to Claimant the opportunity to enroll in the Employee Assistance

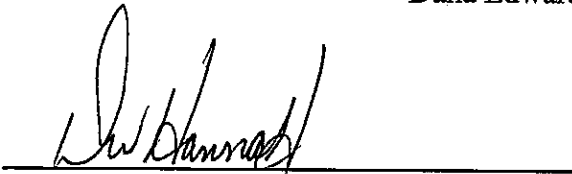
Program and, provided that he successfully complete the requirements of EAP, return Claimant to service without back pay. Failure of Claimant to enter into the EAP within thirty (30) days of Carrier's tender of this opportunity or failure to successfully complete the EAP requirements for his return to service, shall constitute a resignation from carrier's employment, retroactive to the discharge date of March 16, 2001.

AWARD

- 1) Claim sustained, in part and denied, in part, as indicated in the Opinion.
- 2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of this Board.



Dana Edward Eischen, Chairman



Union Member



Company Member