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Award No. 1  
Co File 1157446  
Org. file E27922

**PUBLIC LAW BOARD NO. 6567**

**Parties:**

Brotherhood of Locomotive Engineers  
And  
Union Pacific Railroad

**Statement of claim:**

Claim of Engineer J.E. Cook Jr. (hereinafter claimant) for compensation for all time lost, in connection with Claimants assessment of Upgrade Level 2, in connection with the decision that was rendered on November 30, 1998. Further, Claimants annual vacation rights should be restored, and he should be compensated accordingly. In addition Claimants personal record should be completely expunged of any notation of record pertaining to this case.

**Background:**

Claimant hired on to carrier on March 10, 1995 at Los Angeles, CA, and presently works as engineer at Sparks, NV. On the date in question, November 9, 1998 claimant was working his first yard job YSP92-09 in a new location. This tour of duty was completed without being offered the opportunity to have a meal period, due to a heavy work load and problems with the engines being used. Prior to tying up claimant was informed by Ms. Whitesides, his immediate supervisor that the crew could go to beans at the completion of their work. (Tr. Pg. 39). The crew took the meal period of one (1) hour which resulted in claimant claiming fifty-one (51) minutes overtime.

**Carriers position**

The carrier asserts that overtime must be authorized by a yardmaster or carrier officer.

The carrier states that at no time did anyone authorize the claiming of overtime, also, that the switch foreman was instructed to take their meal period during their tour of duty.

Therefore, the claim of overtime and its resultant compensation was an act of dishonesty and a disregard of instructions.

**Organizations position**

The entire crew was relatively inexperienced. Claimant was working his first shift in yard service at Sparks. The shift was replete with problems such as engine breakdown and radio failure, in addition to a heavy work load. Therefore the crew was not offered a meal period during the tour of duty. The custom at Sparks is for a meal period to be one (1) hour. After completion of work while at the crew register room claimant was informed by Ms. Whitesides, his supervisor to go to beans, then return. This was a usual practice at claimants prior work place, therefore, he saw nothing wrong with such instructions.

Basic to a charge of dishonesty is a willful intent to defraud. Such is certainly not present in the instant case.

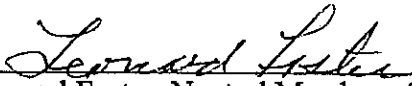
**Findings:**

The Board, upon the entire record finds that the employee and Carrier are Employee and Carrier as defined in the Railway Labor Act, that this Board has jurisdiction over the dispute.

The Board finds that due to mitigating circumstance any discipline assessed is not warranted. It does appear that some education to inexperienced crews would promote harmony and understanding resulting in safe and smooth operation of a difficult industry.

**Award:**

Claim sustained

  
Leonard Foster, Neutral Member of Board

1-20-03  
Date