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Award No. 15
Co. File 1196917
Org. File 27870

PUBLIC LAW BOARD NO. 6567

Parties:

**Brotherhood of Locomotive Engineers
And
Union Pacific Railroad Co.**

Statement of claim:

Claim of Engineer R.R. Seitsinger (hereinafter claimant) for compensation for all time lost, including time attending investigation in connection with claimant's assessment of Level 2 Upgrade. Further, claimants personal record to be expunged of any notation relative to this case.

Background:

Claimant commenced service with the carrier in 1973 and was promoted to engineer in 1984. On the date in question (June 4, 1999) claimant was assigned to run No. MKCWC-02. Claimant was aboard his locomotive in the refueling area identified as 196, awaiting service to his engine. At approximately 8:15 A.M. Mr. Rivera, Manager Terminal Operations, arrived at the refueling area. He states he observed claimant on the locomotive, and that claimant did not have hearing protection in his right ear. At that time Mr. Rivera requested another officer accompany him to verify claimant did not have hearing protection in his right ear. Mr. Rivera in company with Mr. Guzman, S.M.O.P. boarded claimants locomotive and again stated claimant had no earplug in his right ear. Claimant was subsequently charged with violation of Rule 71.2.2.

Carriers Position

Safety of employees is of primary concern. All persons in close proximity to locomotives must wear hearing protection. When aboard engines hearing protection must be worn if doors and windows are open. When observed by carrier officers, claimant was not wearing said protection.

Organizations Position

Claimant's representative was denied the right to properly represent claimant, due to the absence of certain witnesses. The entire hearing was conducted over the objections of the organization. While it is correct that at times claimant had hearing protection in only one


ear; this was precipitated by the need to converse with his conductor and round house personnel.

Findings:

The basic rules of fairness were ignored in the instant case. The hearing was conducted over the objections of claimant's representative. Claimant's representative requested various witnesses and records, however, his requests were ignored. This Board can overlook portions of said requests with the exception of one, that is, claimants Conductor J. Martinez, who was aboard claimants engine during questioning. The conducting officer Mr. M. Chavez did an admirable job of trampling claimant's rights to a full, fair and impartial hearing. Boards have held over the years that flawed hearings excuse the necessity of delving into the merits of a particular case. In support, among many others, we cite Awards 19873, 20094.

Award:

Claim sustained.



Leonard Foster, Neutral Member of the Board

2-27-03
Date