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Award No. 5
Co. File 1218883
Org. File 28119

PUBLIC LAW BOARD NO. 6567

Parties:

Brotherhood of Locomotive Engineers
And
Union Pacific Railroad Co.

Statement of claim:

Claim of Los Angeles Engineer D.W. Armstrong (hereinafter claimant) for compensation for time lost including time lost attending investigation in connection with claimants assessment of Level 5 Upgrade, which was subsequently reduced to Level 3. Further, claimant's vacation to be restored. Claimants personal record should be expunged of any notation relative to this case.

Background:

Claimant was operating in pool freight service on February 6, 2000. Claimant was in the Dolores Yard Office to complete the required clerical work after completion of his road trip. Also present in the yard office were MYO Bill Dawson, Trainer, A.P. Owens, trainer Ms. S.D. Torres and several other employees. The two (2) training officers were present to assist crews in the required F.R.A. reports after a tour of duty.

For various reasons claimant took exception to the instructions issued by trainer Mr. Owens, A heated argument ensued between claimant and Mr. Owens. It is alleged that claimant became irate and shouted expletives in a loud manner. Training Officer, Ms. Torres took great exception to the foul language and conveyed this to MYO Mr. Bill Dawson, who was situated in another room. Mr. Dawson entered the area and called claimant aside where he related that the female trainer Torres was offended by his demeanor. After this discussion claimant re-entered the yard office where the argument

continued. In the immediate aftermath Ms. Torres typed a paper giving her version of the incident, which was conveyed to higher authority.

Claimant subsequently worked several trips and was removed from service on February 9, 2000. After the hearing on February 14, 2000, claimant was subsequently assessed a Level 5 upgrade which is dismissed for violation of rule 1.6 and EEO Policy of Union Pacific Railroad. Claimant was subsequently returned to service on March 23, 2000 with a Level 3 Upgrade.

Carriers Position

Carrier asserts claimant was hostile and abusive to both Trainer Owens and Trainer Torres. His language was very offensive. Carrier states the claimants demeanor, loud voice and expletives caused Ms. Torres to fear for the safety of her colleague. The uncooperative manner and hostile attitude of claimant cannot be condoned. It was therefore, proper to remove claimant from service.

Organizations Position

Claimant was charged with violation of Rule 1.6 and EEO Policy of Union Pacific Railroad, neither of which warrant removal from service prior to a fair and impartial hearing.

The organization states the expletives uttered by claimant are commonplace in the railroad industry, somewhat similar to Billingsgate, the widely known London Fish Market. Therefore, in this industry no one should be offended.

Findings:

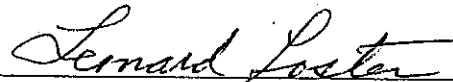
This case contains the old and time worn argument of what constitutes a serious offense, thereby permitting removal from service. In the instant case the Board must consider several factors, i.e. was the female (Torres) as accustomed to foul language as a railroad employee. It appears the answer would be no. Considering the record and evidence the Board finds no compelling reason to disturb the carrier disposition of the case.

Award:

Claim denied

1-24-03

Date



Leonard Foster, Neutral Member of Board