

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 Tucson Hub Engineer R. W. Reid, Jr., 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 August 4, 2000. 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: R. W. Reid, Jr., ("Claimant"), was first employed by Carrier on August 6, 1995 and subsequently promoted to the position of Locomotive Engineer assigned to Carrier's Tucson Service Unit and. As an Operating Department employee, Claimant is required to comply with the General Code of Operating Rules as amended and adopted by Union Pacific Railroad Company effective April 2, 2000. Timetable No. 1 effective October 29, 1998, Safety Rules and Special Instructions to include but not limited to all relevant Company policy.

On or about May 22, 2000 Claimant submitted a request for a 30 day leave of absence account sick, which request was reviewed by the Carrier's Medical Department and granted. However, Claimant did not return to work following the expiration of that leave of absence. Manager of Operating Practices (MOP) C. L. Moore became aware of Claimant's failure to return to service following the leave of absence on June 27, 2000, when she was notified by the Carrier's Medical Department that Claimant's leave was withdrawn. MOP Moore called Claimant by telephone at his home and left a message on his answering machine, noting that the leave of absence had expired and directing Claimant to contact her but Claimant did not return MOP Moore's calls.

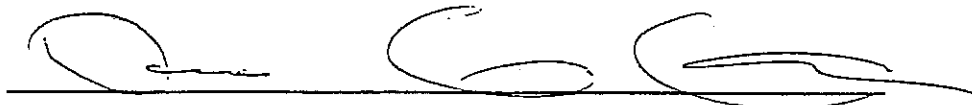
Following due notice by certified letter dated July 5, 2000 and a hearing postponed until August 1, 2000, at the request of the Organization, Carrier found Claimant culpable of failure to comply with the instructions of an Employee Assistance Counselor while on medical leave from Union Pacific Railroad Company, failure to return to work upon completion of said medical leave, and continued failure to protect his employment, in violation of Rules 1.6 and 1.15, as contained in General Code of Operating Rules, effective April 2, 2000, and as contained in the Union Pacific Revised System Special Instructions effective April 2, 2000. Based on those findings, Carrier imposed a level 5 Upgrade disciplinary penalty of termination, from which Claimant and the Organization took a timely appeal culminating in arbitration before this Board.

Careful review of the hearing record leaves us persuaded that Claimant was culpable as charged and we do not find persuasive the organization's argument that he was automatically entitled under the Family Medical Leave Act ("FMLA") to unsolicited extensions of the 30-day leave of absence which he requested and was granted. However, due to extenuating circumstances demonstrated on the record and without prejudice or precedent in any other proceedings, we find

that the penalty of discharge should be reduced to a suspension without pay, conditioned upon Claimant's successful completion of medical and rules examination requirements for a return to service. On that basis, carrier shall offer Claimant reinstatement to service without back pay and Claimant shall have a sixty (60) day period to comply with the conditions for his reinstatement to service.

AWARD

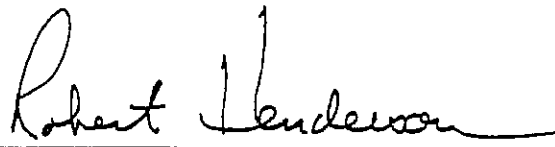
- 1) Claim sustained to the extent indicated in the Opinion.
- 2) Carrier shall implement this award within thirty (30) days of its execution by a majority of the Board.



Dana Edward Eischen, Chairman



Union Member



Company Member