

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 Southwest Hub Engineer D. J. Baugh, for reinstatement to service of the Company with full seniority and all other employment rights restored and that she be compensated for all time lost in connection with Claimant's assessment of UPGRADE Level 5, Permanent Dismissal, on August 3, 2001. Further, Claimant's annual vacation rights should be restored, and she 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: Ms. D. J. Baugh, ("Claimant"), was first employed by Carrier on July 1, 1979 as a Western Region train service employee assigned to Carrier's Tucson Service Unit and was later promoted to the position of locomotive engineer. She was working as a locomotive engineer at Phoenix, Arizona when, on May 14, 1998, she tested positive for illegal and unauthorized drugs. Claimant accepted the drug testing results, entered a EAP rehabilitation/education program and accepted a one-time return to service, as provided for in Article XI of the Carrier's Drug and Alcohol Policy and the Companion Agreement.

On or about June 29, 2001, Carrier's Manager of Administrative Practices (MAP) Nancy Quinn became aware that Claimant had been arrested between January and April 8, 1999, less than one year after accepting the one time return to service, on charges of entering into a conspiracy to manufacture methamphetamine, a dangerous illegal drug. Further, she was charged with knowing

possession in her domicile of equipment and/or chemicals for the purpose of manufacturing methamphetamine. On or about July 2, 2001, MAP Quinn obtained documentation that Claimant had "plea bargained" guilty to a Class 4 Felony on November 29, 1999, and had been sentenced to three years probation. In addition, she was directed to make restitution in the amount of \$11,392.29 through the Clerk of the Superior Court.

Based on the information MAP Quinn had in her possession, she believed Claimant had violated Carrier's Drug and Alcohol Policy and one or more rules as contained in the General Code of Operating Rules. Accordingly, under date of July 3, 2001, the Carrier issued a notice of investigation and hearing which was sent to Claimant at her address of record via UPS Next Day Air. \$11,392.29 through the Clerk of the Superior Court. Following the investigation, Tucson Service Unit Superintendent Hardin reviewed the record and notified Claimant, as follows:

Evidence adduced at formal investigation held on July 26, 2001, at 10:00 a.m., in Phoenix, Arizona, established that the following charges against you have been sustained:

You were convicted on April 18, 2001, in the Superior Court of the State of Arizona, for the County of Maricopa for the crime of 'Offense: Count 2 (Amended); Attempted possession of chemicals/equipment to manufacture methamphetamine, a Class 4 Felony, committed on April 8, 1999. This is in violation of Union Pacific Operation Rule 1.6 (3) of the General Code of Operating Rules (effective April 10, 1994) and Union Pacific Railroad Drug and Alcohol Policy (effective March 1, 1997)

Pursuant to the provisions of the current rules of the Union Pacific Railroad, you are hereby notified that under the Upgrade Progressive Discipline Table, the current violation requires assessment of Level 5, which is permanent dismissal....

At bottom line, Carrier dismissed Claimant for insubordination, a violation of Rule 1.6 (3), because she failed to report the plea bargained conviction, as required by the Drug and Alcohol Policy, Page 3, II B Conduct, which states:

B. Conduct

The conduct of any employee leading to conviction of any misdemeanor or felony involving the unlawful use, possession, manufacture, distribution, dispensation or transportation of any illegal drug or controlled substance or is prohibited.

Any employee convicted of any such misdemeanor or felony must notify his or her supervisor of that fact no later than the end of the first business day immediately following the day the employee receives notice of the conviction. The failure to do so will negate that employees right under this policy for a one time return to service if applicable." Careful analysis of the record evidence leaves this Board persuaded that Claimant did fail to notify.

Close examination of the record show's that Claimant's admitted failure to report the plea-bargained Felony 4 conviction in November 1999 is somewhat offset by her unchallenged and unrebutted testimony that she did report the April 1999 arrest to her supervisors. The court documents show that Claimant, was originally arrested and charged with conspiracy in a crystal meth lab because she was the landlord of a tenant who had been apprehended in her rental apartment in possession of equipment or chemicals for manufacturing methamphetamines. However, after the facts became known, the "Plea Agreement" between Claimant and the State of Arizona, reads in pertinent part as follows:

Plea: The defendant agrees to plead GUILTY to:

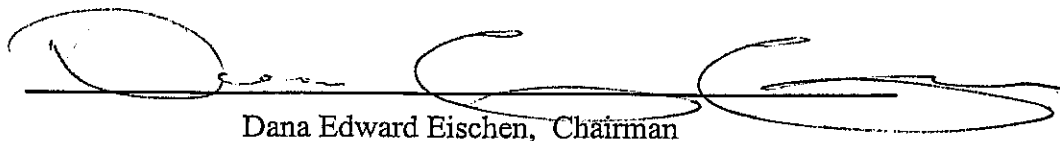
COUNT 2, As amended, attempted possession of chemicals/equipment to manufacture methamphetamine, a class 4 felony . . .

This is a (non)dangerous, (non)repetitive offense under the criminal code."

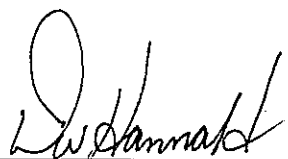
Claimant certainly exhibited extremely poor judgement in this matter but a majority of the Board concludes that there is no evidence that she personally engaged in illegal drug use or manufacture and that, in the unique facts and circumstances presented on this record, her culpability for insubordination is somewhat mitigated. Accordingly, the penalty of discharge is modified to a suspension without pay for time served and Carrier is directed to reinstate her to service on a "Last Chance" basis, with seniority unimpaired but without back pay or benefits for time out of service.

AWARD

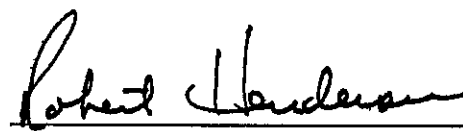
- 1) Claim sustained, in part and denied, in part, as indicated in the Opinion.
- 2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of this Board.



Dana Edward Eischen, Chairman



Union Member



Company Member

3/8/03