

**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 Los Angeles district Engineer D. W. Siegfried, 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 30, 2001. 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:** Based on a sexual harassment complaint from a housekeeper at the away from home terminal facility at Long Beach, California, Engineer D. W. Siegfried, ("Claimant") was charged with violating Carrier's EEO and removed from service on July 30, 2001. Several days after the alleged occurrence, the housekeeper reported to her managers that a man meeting Claimant's description had intentionally exposed himself to her, but she placed the date at June 7, 2002. Carrier managers checked the records and ascertained that Claimant had not been at the facility on June 7, 2001. The complaining witness then modified her statement by changing the date to June 21-22, 2001.


Based on an investigative hearing which the complaining witness refused to attend, Carrier found Claimant guilty and assessed the discharge penalty. Carrier's entire case against Claimant was premised on hearsay statements of the complaining witness who was not subject to cross-


examination. For his part, Claimant acknowledged that an "embarrassing moment" had occurred on June 22, 2001, when a female room cleaner employed by the Holiday Inn entered his room just as he exited the shower and saw him naked. But he flatly denied that he had intentionally exposed himself and testified that he was so embarrassed by the unexpected presence of the room cleaner that he immediately "ducked for cover."


Carrier has failed to carry its burden of persuasion on this record. Consistent with the terms of the Upgrade Policy, the discharge is modified to the Level 3 which was proffered to Claimant by Carrier prior to the formal investigation. Carrier is directed to restore Claimant to service with back pay for time out of service, offset by the five (5) days associated with the Level 3. [Because the question of vacation restoration in such cases is currently the subject of an interpretation proceeding before this Board, we decline to rule on that issue in this case at this time, but we retain jurisdiction to issue a supplemental Award addressing that issue in this case, if necessary, depending upon the outcome of the interpretation proceeding]

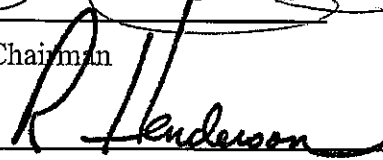
**AWARD**

- 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.

  
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Dana Edward Eischen, Chairman

  
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Union Member

  
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Dana Edward Eischen, Chairman

  
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R. Henderson  
Company Member