

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 Hub Engineer S. J. Blasyak, 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 November 8, 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: At all times pertinent to this matter, Engineer S. J. Blasyak, ("Claimant") was assigned to the Engineers Reserve Board in Los Angeles, California, pursuant to Article 3 (1), as follows:

An engineer in reserve status must be available for return to service upon 30 days' written notice by Certified Mail, with restricted delivery to addressee only and a copy to the Local Chairman. Reserve pay will continue for only seven (7) days after postmark and the employee must return to service within thirty (30) days of attempted delivery. Failure to comply with any of these requirements will result in forfeiture of all seniority rights subject to the provisions of Article 32, Section 21 of the engineers' agreement, or appropriate EP&SW Discipline Rule, including the Pacific Electric Discipline Rule.

Claimant in this case was dismissed for not appearing as directed for a follow-up drug test, as required under the terms of a Leniency Agreement. On the day when Claimant was called and directed to report to the nearest Carrier facility for the test, he was working his other job and told the Carrier Officer that he could not get away on such short notice. At the formal investigation into

charges of alleged insubordination and violation of the Carrier Drug Policy, investigation, Claimant and the Organization also argued that unless and until he received Certified Mail recall to service he was not "subject to duty" and therefore the instruction to appear for the drug/alcohol test was invalid.

At the conclusion of the August 19, 2002 session at which this case was heard, both Parties requested an expedited decision by the Board, with full Opinion and Award to follow as soon as possible. This Opinion and Award memorializes the bench decision rendered by the Board on August 19, 2003, which was confirmed by letter of the Chairman of the Board dated August 30, 2002.

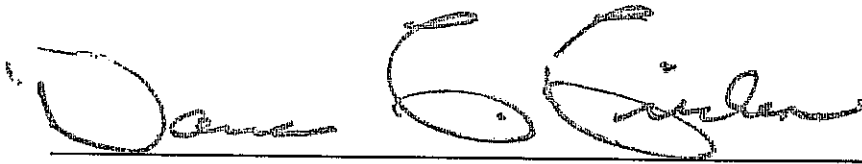
It appears from the record that Claimant held a good faith but erroneous belief that, as a Reserve Board Engineer, he was not subject to FRA/UPRR follow-up "Companion Agreement" drug testing. In the judgement of this Board, to immunize engineers subject to return to active duty within seven to thirty days' of a recall notice from such mandated drug tests would be both unreasonable and violative of public policy. Thus the Reserve Board Engineer may not decline or unreasonably delay compliance with a Carrier directive to report and participate in such testing. By the same token, however, when a Reserve Board Engineer has previous *bona fide* commitments which make immediate reporting and participation impracticable or impossible, Carrier managers must make reasonable accommodations as to the timing and location of such tests.

It is manifest that each such case must turn on its own particular set of facts and circumstances. In the matter now before the Board, Claimant erred by asserting immunity from testing but Carrier managers also erred by not allowing him to meet his other legitimate business obligations on the day he was ordered to test and then report the next day to be tested.

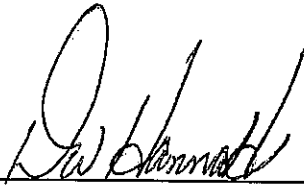
In the unique facts of record presented herein, we concluded that the discharge was inappropriate and Claimant should be recalled to service with seniority unimpaired but without back pay, conditioned on his passing all normally required return-to-work examinations.

AWARD

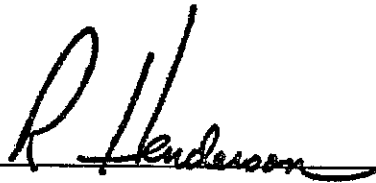
- 1) Claim sustained in part and denied in part, as indicated in the Opinion.
- 2) Based on the unique facts and circumstances of this case, without precedent and conditioned upon Claimant passing all return to work examination requirements, Carrier was directed to reinstate Claimant to service, effective August 19, 2002, with seniority intact but without back pay.



Dana Edward Eischen, Chairman



Union Member



Company Member