

EMPLOYEE'S EX PARTE SUBMISSION  
Before  
SPECIAL ADJUSTMENT BOARD NO. 180

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS  
&  
UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of Roseville Hub Engineer R. W. McManus 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 December 7, 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.

STATEMENT OF FACTS:

Engineer R. W. McManus, (hereinafter referred to as "Claimant"), a Union Pacific Railroad Company (hereinafter referred to as "Carrier") engineer, while working a yard engine in Roseville sustained a personal injury on March 12, 2001.

On July 17, 2001, was sent a NOTICE OF INVESTIGATION letter where he was charged with allegedly failing to comply with instructions to provide current updated medical information as requested, a possible violation of Rule 1.6 "Conduct", and Rule 1.13 "Reporting and Complying with Instructions" as contained in the Union Pacific Railroad's General Code of Operating Rules effective April 2, 2000.

On August 16, 2001 a formal investigation was convened at Roseville, California, and reconvened on September 14, 2001, October 17, 2001, and November 28, 2001 to develop the facts in connection with the alleged violation of Rule 1.6, and Rule 1.13.

A decision that Claimant was culpable of the charges, and that he was assessed an "UPGRADE LEVEL 5," and he was

PERMANENTLY dismissed from service was sent NOTICE OF PERMANENT DISMISSIAL under the date of December 7, 2001. An appeal of this dismissal for reinstatement, for pay for all time lost, restoration of all employee benefits and expunging of Claimant's personal record was duly undertaken.

Claimant has not been returned to service.

This dispute has been handled in accordance with applicable schedule rules up to, and including, conference with the highest officer of the Carrier designated to handle such matters. This dispute is properly placed before this Board for final adjudication.

POSITION OF THE COMMITTEE:

Item 2- GENERAL; Item 3 - NOTICE; Items 11; 13 - APPEALS and Item 16 - MISCELLANEOUS, Union Pacific System Agreement - Discipline Rule Attachment (a), revised 02/28/96 (BLE EXHIBIT A), which read as follows:

GENERAL

"2. Locomotive engineers will not be disciplined without first being given a fair and impartial investigation except

as provided below. They may, however, be held out of service pending investigation, but it is not intended that an engineer be held out of service for minor offenses. (emphasis added.)

#### NOTICE

3. Within 10 days of the time the appropriate company officer knew or should have known of an alleged offense, the engineer will be given written notice of the specific charges against him or her. The notice will state the time and place of the investigation and will be furnished sufficiently in advance to allow the engineer the opportunity to arrange for representation by BLE representative(s) (the BLE Local Chairman or other elected BLE Officers) and witnesses. The notice will propose discipline to be assessed if investigation is waived and designate a carrier officer who may be contacted for the purpose of arranging for an informal conference on the matter. A copy of the notice will be furnished to the BLE Local Chairman.

#### APPEALS

11. If the engineer is not satisfied with the decision, the BLE General Chairman may appeal to the designated Labor Relations officer within 60 days from the date of the Superintendent's decision.

13. If the engineer is dissatisfied with the decision of Labor Relations, proceedings for final disposition of the case under the Railway Labor Act must be instituted by the engineer or his or her duly authorized representative within one year of the date of that decision or

the case will be considered closed and the discipline will stand as issued unless the time limit is extended by mutual agreement.

#### MISCELLANEOUS

16. The engineer being investigated or the BLE representative may request the Carrier to direct a witness to attend an investigation, provided sufficient advance notice is given as well as description of the testimony the witness would be expected to provide. If the Carrier declines to call the witness and the witness attends at the request of the engineer or BLE and provides relevant testimony which would not otherwise have been in the record, the Carrier will compensate the witness as if it had directed the witness to attend."

#### I. PROCEDURE

##### A: CARRIER FAILED PROCEDURLY IN GIVING NOTICE OF INVESTIGATION

Item 3, - NOTICE, Union Pacific System Agreement - Discipline Rule Attachment (a), revised 02/28/96 (BLE EXHIBIT A), states "Within 10 days of the time the appropriate company officer knew or should have known of an alleged offense, the engineer will be given written notice of the specific charges against him or her..." (Emphasis added.)

The facts developed during the investigation indicate that approximately eighty nine (89) days elapsed from the time the Carrier became knowledgeable of the alleged occurrence under investigation and the time a NOTICE of investigation was issued July 17, 2001. Carrier submitted documentation from Carrier Officer Shudak dated April 20, 2001. This documentation was entered into the Transcript of Investigation as Exhibit Page 9 (BLE EXHIBIT B), a letter from Carrier Officer Shudak requesting additional information regarding the Claimant's medical status.

To permit the Carrier to prevail in its position that Claimant received a fair and impartial hearing is tantamount to modifying or negating said Item 2, GENERAL, and Item 3, NOTICE of the CBA, a function which is expressly reserved to the parties. We urge the Board to concur.


**A. CARRIER DID NOT MEET ITS BURDEN OF PROOF**

Upon examination of the evidence, we believe it is clear that Claimant is innocent of the charges levied against him.

The exhibits entered into the record of the transcript clearly indicate the Claimant did indeed respond to the Carrier's requests for information and provided the information from his doctors in a timely manner. The Carrier has created a sham of the due process system by trying to mitigate their liability under FELA and failed miserably to meet their burden of proof of the alleged charges in this case.

SUMMATION:

After a careful review of the facts of the instant case, the circumstances and the procedural aspects, we ask the Board to affirm the position of this Committee and issue a sustaining award.

A handwritten signature in cursive script, appearing to read 'D.W. Hannah', is written over a horizontal line.

D.W. Hannah, General Chairman  
Brotherhood of Locomotive Engineers  
General Committee of Adjustment

## TABLE OF EXHIBITS

<u>BLE Exhibit NO.</u>	<u>Description.</u>
A.	System Agreement – Discipline Rule (Attachment a)
B.	Carrier Officer Shudak Letter Dated April 20, 2001

## SYSTEM AGREEMENT - DISCIPLINE RULE

1. All existing agreements pertaining to the handling of discipline are eliminated and replaced by this agreement.

### GENERAL

2. Locomotive engineers will not be disciplined without first being given a fair and impartial investigation except as provided below. They may, however, be held out of service pending investigation, but it is not intended that an engineer be held out of service for minor offenses.

### NOTICE

3. Within 10 days of the time the appropriate company officer knew or should have known of an alleged offense, the engineer will be given written notice of the specific charges against him or her. The notice will state the time and place of the investigation and will be furnished sufficiently in advance to allow the engineer the opportunity to arrange for representation by a BLE representative(s) (the BLE Local Chairman or other elected BLE Officers) and witnesses. The notice will propose discipline to be assessed if investigation is waived and designate a carrier officer who may be contacted for the purpose of arranging for an informal conference on the matter. A copy of the notice will be furnished to the BLE Local Chairman.

### WAIVER

4. Prior to the investigation, the engineer (and the BLE representative if desired by the engineer) may contact the designated carrier officer and arrange for an informal conference to discuss the alleged offense and proposed discipline. Such informal conference may be either in person or by telephone.
  - (a) If such informal conference results in the proposed discipline being dropped, no further action will be taken.
  - (b) If such informal conference results in proposed discipline being accepted by the engineer and the investigation being waived, the engineer's record will be updated accordingly.

- (c) if such informal conference does not result in either (a) or (b) above or no informal conference takes place, the discipline imposed as a result of a hearing may not exceed that proposed in the notice of charges.

### INVESTIGATION

5. Unless postponed for good cause, the investigation will be held no later than 10 days after the date of the notice.
6. When practicable, the investigation will be held at the engineers home terminal. When that is not practicable, the investigation will be held at a location which will minimize the travel, inconvenience and loss of time for all employees invlved. When an engineer is required to travel to an investigation at other than his or her home terminal, the engineer will be reimbursed for actual, reasonable and necessary expenses incurred.
7. Where request is made sufficiently in advance and it is practicable, the engineer anwor the BLE representative will be allowed to examine material or exhibits to be presented in evidence prior to the investigation. At the investigation, the engineer andor the BLE representative will be afforded the opportunity to examine or cross examine all witnesses. Such examination will extend to all matters under investigation.
8. The investigation will be recorded and transcribed. Copies of transcript will be furnished to the engineer and the BLE Local Chairman no later than the date discipline is issued. If the accuracy of the transcript is questioned and the investigation was electronically recorded, the tapes shall be examined and, if necessary, the transcript will be corrected.

### DECISION

9. A written decision will be issued no later than 10 days after completion of the hearing. The notice will be sent by US Mail to the last known address of the engineer and to the BLE Local Chairman.
10. If the Superintendent fails to issue a decision within such 10 day time engineer is found not at fault, the engineer will be paid for any time engineer's record will be cleared of the discipline at issue.

## APPEALS

11. If the engineer is not satisfied with the decision, the BLE General Chairman may appeal to the designated Labor Relations officer within 60 days from the date of the Superintendent's decision.
12. The Labor Relations officer will respond to the appeal within 60 days from the date of the BLE General Chairman's appeal. If the Labor Relations officer fails to respond within 60 days, the engineer will be paid for any time lost and the engineer's record will be cleared of the discipline at issue.
13. If the engineer is dissatisfied with the decision of Labor Relations, proceedings for final disposition of the case under the Railway Labor Act must be instituted by the engineer or his or her duly authorized representative within one year of the date of that decision or the case will be considered closed and the discipline will stand as issued, unless the time limit is extended by mutual agreement.

## MISCELLANEOUS

14. If a dispute arises concerning the timeliness of a notice or decision, the postmark on the envelope containing such document shall be deemed to be the date of such notice or decision.
15. Engineers attending an investigation as witnesses at the direction of the carrier will be compensated for all time lost and, in addition, will be reimbursed for actual, reasonable and necessary expenses incurred. When no time is lost, witnesses will be paid for actual time attending the investigation with a minimum of two hours, to be paid at the rate of the last service performed.
16. The engineer being investigated or the BLE representative may request the Carrier to direct a witness to attend an investigation, provided sufficient advance notice is given as well as a description of the testimony the witness would be expected to provide. If the Carrier declines to call the witness and the witness attends at the request of the engineer or BLE and provides relevant testimony which would not otherwise have been in the record, the carrier will compensate the witness as if it had directed the witness to attend.
17. If, by operation of this agreement or as the result of an arbitration decision, the Carrier is required to pay an engineer who has been disciplined for "time lost", the amount due shall be based on the average daily earnings of the engineer for the 12 month period (beginning with the first full month) prior to removal from service. The sum of the claimant's earnings during such period shall be divided by 365 to arrive at the average daily earnings to be applied in determining the amount of lost wages, based on the number of days of discipline.

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# UNION PACIFIC RAILROAD COMPANY

Operating Department

P-9

Daniel J. Shudak, Gen. Superintendent  
Roseville Service Unit  
Tel: (916) 789-6000



10031 Foothills Blvd.  
Roseville, California 95747  
FAX: (916) 789-6020

April 20, 2001

Certified Mail – Return Receipt Requested

Mr. R. W. McManus  
Engineer - SSA#553724515  
3523 Laird Street  
Loomis, CA 95650-9551

Dear Mr. McManus:

As mentioned in my letter of April 3, I have asked the Union Pacific Health Services Department to determine your current medical status and your ability to safely perform your job duties. This request is based on present practice and policy of Union Pacific Railroad and is in line with the company's commitment to provide employees the opportunity to return to work and to obtain the maximum use of our work force.

The following information has been provided by your doctor(s):

## 1. Prognosis

The Health Services Department has reviewed this information and has determined that the following additional information is necessary to make an objective and informed decision regarding your medical status. You should have your doctor(s) provide *all* the information listed below to this office *no later than May 4, 2001*:

1. Diagnosis
2. Detailed treatment plan
3. Current level of functional abilities and,
4. Return to work plan

The information should be provided on either the attached Medical Progress Report (Form #16920) or in a written report. This information is needed to make an objective, informed decision about your medical status and your ability to safely perform your job duties. **Failure to comply by the date specified may result in disciplinary action.**

If you have any questions concerning the medical information requested, you may contact the Manager-Medical Programs at (402) 271-4326 in Omaha. In the meantime, if you have any questions regarding this request or the process in general, you can contact Linda Wallace, Administrative Assistant, in my office at (916) 789-6013.

Yours truly,

A handwritten signature in black ink, appearing to read "D. J. Shudak".

Enc.

cc: Health Services Dept. (Fitness-for-Duty)  
CMS (West) - Omaha via LN  
Records Management - Omaha  
G. L. Poff, DTO - Roseville  
Raj Deo, Risk Management - Roseville

BLE EXHIBIT B