

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 Engineer M. D. Nelson, for reinstatement to the 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 assignment of UPGRADE Level 5, Permanent Dismissal, on February 15, 2002. 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: Engineer M. D. Nelson ("Claimant") was employed by the Carrier as a Locomotive Engineer when, on January 21, 2002, the Carrier was advised he had been arrested on a charge of allegedly committing burglary and "retaliation". Further investigation led to an additional charge that he created fraudulent Union Pacific payroll checks and altered his Union Pacific identification card and locomotive engineer's certification card. Following written notice of charges and a formal investigation, Carrier found Claimant culpable as charged and assessed the discharge penalty.

Careful review of the record evidence leads this Board to modify that penalty. Although Claimant was not without fault for negligence regarding care and custody of his official identification materials and embroiling Carrier in his domestic dispute, the record does not persuasively support the felony charges of burglary, fraud and dishonesty. Based on the unique facts

and circumstances of this case, on a non-precedent, non-referable basis, the Level 5 discharge penalty is reduced to a Level 3 and Claimant shall be reinstated to service with seniority unimpaired if he passes all necessary return to work examinations, without back pay except for the last ninety (90) days of time out of service. 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.

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 on August 20, 2002 to reinstate Claimant to service at Upgrade Level 3 , with seniority unimpaired, but with back pay only for ninety (90) days of time held out of service.



Dana Edward Eischen, Chairman



Union Member



Company Member