

AWARD No. 2224
NMB CASE Nos:
2224, 2232 & 2291
UNION CASE Nos:
E-27829-32-21(g)
E-27881-32-21(g)
E-28116-32-21(g)
COMPANY CASE Nos.:
1131337
1152993
1218882

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:

Case 2224 Claim of Tucson Hub Engineer S.H. Gandara for compensation for all time lost, including time lost while attending the investigation, in connection with Claimant's assessment of Level 2 Upgrade on January 12, 1998. Further, Claimant's annual vacation rights and supplemental credits 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.

Case 2232 Claim of Tucson Hub Engineer S.H. Gandara for compensation for all time lost, including time lost while attending the investigation, in connection with Claimant's assessment of Level 3 and suspension in connection with the decision that was rendered on September 11, 1998. Further, Claimant's annual vacation rights 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.

Case 2291 Claim of Tucson Hub Engineer S.H. Gandara for reinstatement to service of the Company with full seniority and all other employment rights restored and that he befor all time lost in connection with Claimant's assessment of Upgrade Level 5, Permanent Dismissal, on February 14, 2000. 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.

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OPINION OF THE BOARD:

The Parties agreed to consolidate for disposition in a single arbitration proceeding three (3) progressive Upgrade disciplinary actions by Carrier against Engineer S. H. Gandara, culminating in the assessment of a Level 4 on February 14, 2000, which was “Upgraded” based on then-current Level 3 to a Level 5 discharge. At the time of his termination, Engineer Gandara had approximately twenty-six (26) years with the Carrier and was regularly assigned to pool freight service between Tucson and Yuma, Arizona, home terminal Tucson, Arizona.

The Level 2 Upgrade discipline of January 12, 1998, was due to alleged violation of Rule 1.13 “Reporting and Complying with Instructions”; in the context of a written directive to provide certification of Claimant’s medical condition and/or return to work from a protracted leave of absence. The Level 3 Upgrade discipline of September 11, 1998, was due to alleged failure to protect his assignment, a violation of Rule 1.15; in the context of Claimant’s admission to the emergency room at St. Mary’s Hospital on August 20, 1998. Finally, the Upgrade Level 4 discipline of February 14, 2000, which triggered the Level 5 discharge, was due to an alleged violation of Rule 6.31, “Exceeding Maximum Authorized Speed”.

The Board carefully considered the myriad of intertwined procedural and merits issues presented in the disciplinary assessments under consolidated review, but no useful purpose is served by rehashing all of those points in this Award. It suffices to state that based on all of the unique facts

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and circumstances presented on this record, and without precedent for any other case, the Board concluded that the proper disposition of these consolidated grievance claims is a reduction Engineer Gandara's Upgrade status to Level 3 and reinstatement to service with back-pay for nine (9) months of the time he was held out during the period from February 14, 2000 until the date of his reinstatement. At the joint request of the Parties, the Board issued our bench decision directing that result at the conclusion of the hearing and thereafter memorialized that decision in this written Award.

AWARD

Claim sustained to the extent indicated in the Opinion.



Dana Edward Eischen, Chairman



Union Member



Company Member