

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

STATEMENT OF CLAIM:

"Request the removal from the record of engineer R. W. Palmer the level 1 discipline and any other penalties associated with this discipline.

FINDINGS:

The evidence gathered and laid before this Board was as follows:

Engineer R. W. Palmer was assigned to the extra engineers board XE52. The EX52 board earns free days to be used for absences that do not count against the employee as excessive absences. Before charging an employee with excessive absenteeism, Carrier policy requires employee must be contacted, and information must be ascertained to determine whether employee was off due to his own illness or the illness of a family member, and whether employee can provide medical documentation.

Attendance record shows Engineer Palmer laid off work on September 10-11, 2004; November 19-23, 2004; November 24-26, 2004; December 10-11, 2004; December 22-27; 2004, and December 30-31, 2004.

On January 10, 2005, Carrier mailed Engineer Palmer a certified letter advising:

"You are hereby notified to be present in the conference room, 5245 River Road, Avondale, LA on January 20, 2005 at 3:30 p.m. for a formal investigation.

The purpose of this investigation is to develop the facts and determine responsibility, if any, in connection with your alleged violation of the Union Pacific Attendance Policy effective January 15, 2004, as a result of your alleged failure to protect employment by excessively absenting yourself from service as noted on the attached work history, between October 1, through December [January] 31, 2004, while employed as an engineer with the Union Pacific Railroad.

You are charged with responsibility which may involve a violation of the General Code of Operating Rules 1.13, and 1.15 as adopted and modified by the Union Pacific Railroad.

PLB 6833
CASE NO. 21
AWARD NO. 21

Formal investigation was postponed by mutual agreement and convened on February 15, 2005. After reading transcript of investigation, Carrier found Engineer R. W. Palmer responsible for violation of GCOR 1.13 – Reporting and Complying with Instructions; and GCOR 1.15 – Duty - Reporting or Absence. Upon a finding of responsibility, Engineer Palmer was assessed discipline at Level 1.

Discipline was appealed and denied in accordance with labor agreement. Partisan parties have been unable to resolve this dispute on property, and it comes, now, before this Board for final and binding adjudication.

At the outset, Organization argued charges were about excessive absenteeism and unrelated to Rule 1.13 – Reporting and Complying with Rules.

Carrier maintained Engineer Palmer was responsible for violating Rule 1.13, among others, when he violated paragraph 2 of Superintendent's Bulletin #55. According to Carrier, Superintendent's Bulletin #55 prohibited frequent and pattern of weekend layoffs; frequent sick/sickness in family layoffs without medical documentation, and lower availability days when compared to peers.

In response to Organization's inquiry as to the standard that established a pattern of weekend layoffs, Carrier witness explained that a pattern emerged when an employee laid off four weekends out of eight – or 50%. Carrier witness asserted, also, that Engineer Palmer had been charged with excessive absenteeism, only, after comparing his attendance record with that of his peers; and that the unfavorable comparison is what gave rise to Carrier's initiation of formal investigation.

Testimony establishing basis for formal investigation is as follows:

Questions by Organization Representative – E. Doyle

Answers by Carrier Witness – D. T. Henagan

Q: Lower availability when compared to peers?

A: Yes, sir.

Q: Did you compare him to peers before you called the investigation?

A: Yes, sir, we always do.

Q: O.K., so you're telling me his peers work more days than him?

A: Yes, sir.

Q: I beg your difference on that, due to the fact every investigation – 90% of the investigations that I've had in here have been his peers on the engineer's extra board. All of them is basically working about the same amount of days.

*Questions by Hearing Officer – L. Boocker
Answers by Carrier Witness – D. T. Henagan*

Q: With – with this point that Mr. Doyle brought up with his relationship in comparing him to his peers on the XE52 board, do you have any documentation as to that as - - as for as his availability compared to his peers?

A: No, sir, I didn't bring it with me.

OPINION OF THE BOARD:

We have read the entire record, and we are, now, thoroughly familiar with evidence assembled and positions staked out by both parties. There is a stark contrast in conclusions the parties are asking this Board to reach.

Evidence we found most helpful in arriving to our own conclusion was Superintendent's Bulletin #55, and the testimony of Carrier witness. According to Superintendent's Bulletin #55, after identifying an employee with an apparent excessive absenteeism problem involving frequent sickness - whether his own or that of a family member - Carrier would conduct a preliminary "information-gathering" investigation to determine the legitimacy of absenteeism, and whether employee could provide proper medical documentation; this would be done prior to initiating a formal investigation.

In the instant case, no such investigation was conducted; indeed, Carrier witness and charging officer argued strongly that no such "information-gathering" investigation was required. Evidence of record indicated that when Engineer Palmer received charging officer's final call prior to issuance of letter of notification, he was at the hospital at his wife's bedside.

Engineer Palmer's reason for being absent may or may not have been acceptable, but Carrier violated its own policy by not making an inquiry.

Both Superintendent's Bulletin #55, as well as testimony of Carrier witness and charging officer confirmed that formal investigation of Engineer Palmer was to be initiated on the basis of an unfavorable comparison of his attendance record to that of his peers. But,

PLB 6833
CASE NO. 21
AWARD NO. 21

when asked to provide evidence to support that unfavorable comparison, charging officer was unable provide sufficient and credible evidence to sustain Carrier allegation. A preliminary information-gathering investigation may have provided the kind of data that would have allowed the comparative analysis of attendance records contemplated in Carrier excessive absenteeism policy.

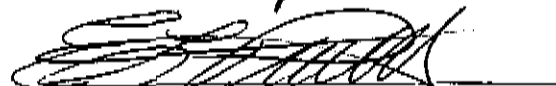
Upon a careful reading of the record and a thorough evaluation of arguments and positions taken by both parties, the conclusion that forces itself upon us is that Carrier failed to make its case. In order for Carrier to prevail in what often appears to be a simple, garden variety, absenteeism dispute, it is not enough to make the allegation; Carrier must, also, proffer sufficient and credible evidence to overcome the burden of proof.

AWARD:

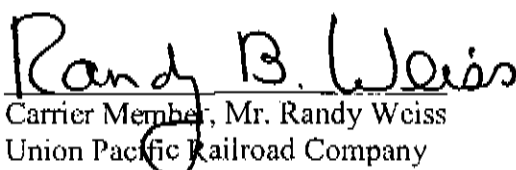
Claim is sustained per findings above.



J. E. (Jim) Nash – Arbitrator, Chairman and Neutral Member



Employee Member, Mr. Lee Pruitt
Brotherhood of Locomotive Engineers &
Trainmen



Carrier Member, Mr. Randy Weiss
Union Pacific Railroad Company

July 27, 2005