

The First Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

( (former Missouri Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim of Engineer L. G. Lackey for pay for lost time as a result of a sixty (60) days actual suspension assessed against him, as well as the fifteen (15) days suspension which was triggered from a previously deferred suspension (total of seventy five (75) days lost time); also that his record be cleared of any and all notation of said discipline."

FINDINGS:

The First Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On November 7, 1989, Claimant was working as an engineer on a train which was involved in an accident in the Alton and Southern Yard, East St. Louis, Illinois. The accident was investigated on site, by officials from both the A&S and Claimant's employing Carrier. At the conclusion of the on site investigation, Claimant and the remainder of the crew were released to tie up. As the Crew was being transported to their tie up point by a contract limousine service, Carrier's Manager Terminal Operations contacted the limo driver by radio and asked the driver to advise Claimant to remain at the roundhouse until the Manager could get there for "further discussion." Claimant waited at the roundhouse until his twelve hour total time on duty expired, after which he told a hostler that he was hungry and tired and was going home, and if the Manager wished to talk to him further about the incident he could call him at home. Later, upon his arrival at the roundhouse the Manager received the information from the hostler but did not attempt to call Claimant at home.

On November 9, 1989, charges of insubordination were placed against Claimant alleging that he failed to follow instructions to remain at the roundhouse. After conclusion of the Investigation Claimant was given a 60 day suspension, which triggered a deferred 15 day suspension. The Organization seeks to have the discipline removed and Claimant paid for all losses.

For a variety of reasons the discipline assessed in this matter will not be allowed to stand. Mainly, it is questionable in this record, that the request of the Manager, conveyed through a contract limo driver, was sufficiently articulated or adequately delivered by the selected "agent", so as to be a command, which would clearly be understood to constitute an act of insubordination if not followed irrespective of the expiration of the Claimant's legal duty time.

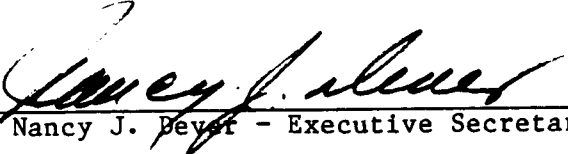
In the circumstances present, a lengthy Investigation had occurred at the site of the derailment, the crew had been released by the Manager, the reason for "further discussion" was not stated, the time the "further discussion" would probably occur was indefinite, the lawful time on duty had expired, etc. Thus, critical elements to support a charge of insubordination are missing. The discipline will not be allowed to stand. The Claim will be sustained as presented.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Attest:

  
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois this 3rd day of October 1991.