

CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Form 1

Award No. 24316
Docket No. 43897
94-1-92-1-U-1698

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

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of Brotherhood of Locomotive Engineers that:

- (a) Claim of Engineer T. R. Ring for full back pay, fringe benefits, vacation rights, and that all notation of this discipline be removed from his record, due to suspension from March 24, 1992, (date removed from service) to September 1, 1992, for an incident involving an efficiency test on March 24, 1992."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Carrier convened an Investigation on April 2, 1992, to determine if Claimant, the Engineer of train CHFVZ-24, Extra 6125 South, passed an intermediate block signal with a dark aspect at 7:58 p.m. on March 24, 1992. The following facts were adduced at the Investigation.

While the record is unclear, three Carrier officers originally intended to conduct an efficiency test on a northbound train. At the last moment, they decided to conduct a test on Claimant's southbound train at Bourbon, Illinois. The test took place in CTC, single track territory during the evening (after sunset) of March 24, 1992.

The three officers hurriedly (due to the change in plans) placed the shunts on the track near the signal at milepost 159.9. These preparations caused the signal at milepost 157 to display a yellow aspect (approach) and an unwanted red over lunar aspect (stop) at the South Tuscola signal located at milepost 155.5. If the test was being conducted in a normal fashion, the 155.5 signal would have shown an approach limited indication. An officer removed the red bulb from signal 159.9. The three officers then observed that the signal showed a dark aspect to southbound traffic. A dark aspect is read as the most restrictive (stop) signal. However, the officers then drove their car fifty yards south of the signal so they could only see the aspect displayed to northbound traffic. They could no longer see what signal a southbound train crew would observe.

Train CHFVZ-24, Extra 6125 South, was an expedited freight train operating between Chicago and St. Louis. Claimant took control of the train at Villa Grove, Illinois.

At South Tuscola, Claimant stopped the train due to the red over lunar aspect showing on signal 155.5. Claimant received the train dispatcher's authorization to proceed past the signal. Travelling about thirty miles per hour, Claimant observed the yellow aspect on signal 157. Claimant and his Conductor testified that the signal at milepost 159.9 was clear although the Conductor at first intimated that he was unsure. Nevertheless, Claimant was calling all signals and he called the 159.9 signal as clear. Because they could only see the backside of the signal, one Carrier officer, the Manager of Train Operations, testified that he could not definitively state that Claimant did not have a clear signal. When the Carrier officers directed Claimant to gradually bring the train to a halt, both the Conductor and Claimant expressed genuine amazement after being told that they had purportedly ran past a dark signal. As the train approached and passed by the signal, Claimant accelerated the speed of the train to almost sixty miles per hour.

The Board carefully perused the voluminous transcript and record in this case. At the onset, we note that it is proper and indeed, sometimes mandated, that the Carrier conduct efficiency tests even if the efficiency test involves the removal of a signal light bulb. However, the Carrier bears the burden of demonstrating that a particular efficiency test was proper, fair and safely administered. See Public Law Board No. 4558, Award 2.

In addition, the Carrier bears the concomitant burden of proving that an engineer failed the test. In this case, the Carrier did not satisfy its burden of proving that Claimant failed the test for two reasons. First, it was possible that the 159.9 signal displayed a clear aspect at the time Claimant passed the signal because the Carrier officers did not remove the green bulb from the signal. More importantly, at the time that Claimant's train was approaching the signal, the Carrier officers were not in a position to observe what Claimant saw from the locomotive cab. The Carrier officers were seated in an automobile fifty yards behind the signal and, even at nighttime, they could not tell whether the signal to southbound trains was illuminated or dark. Thus, the officers were not in a position to confirm that the signal was dark at the moment that Claimant's train went by the signal. One Carrier officer frankly and candidly conceded that he could not say for certain that Claimant did not have a clear signal. There are also other plausible explanations. Moonlight or some artificial light may have made it seem as though the green bulb were illuminated. Perhaps a shunt was not connected properly or did not operate consistently throughout the duration of the test.

Second, it is highly unlikely that Claimant and his Conductor were not alert. Just four miles prior to the purportedly dark signal, Claimant brought the expedited train to a stop at an unexpected red signal. At the 159.9 signal, Claimant increased the throttle of the engine as he passed the 159 signal which is circumstantial corroboration that not only had Claimant perceived that the signal was clear but also that he was fully alert. It is implausible, if not impossible to believe, that an engineer would increase train speed after passing a restricted signal. The train could encounter all kinds of obstacles. A reasonable engineer would not place his life in jeopardy. It is also unlikely that another crew member would stand idly by and allow the engineer to increase the speed after running through a stop signal. See Public Law Board No. 4656, Award 9. In addition, Claimant and the Conductor expressed sincere shock when they were told they passed a dark aspect. This is further circumstantial evidence demonstrating that they saw or perceived that they saw a clear signal.

For the reasons discussed above, the Carrier fell short of proving that Claimant failed the efficiency test on March 24, 1992. Inasmuch as the Carrier did not satisfy its burden of proof, the Board must sustain this Claim.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT
By Order of First Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 10th day of June 1994.