

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24852

Docket No. 44496

97-1-96-1-U-1865

The First Division consisted of the regular members and in addition Referee Marvin F. Hill, Jr. when award was rendered.

(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad, Upper Lines)

STATEMENT OF CLAIM:

"Claim of Engineer J. M. Hannon, Jr., for the removal of notation of discipline Level 1 under the Carrier's 'Upgrade' Discipline Policy and all lost time associated with his attendance of (sic) the investigation for allegedly excessively delaying his train due to performing an FRA mandated daily locomotive inspection."

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.

Claimant was called to operate Train NPMENS-16 at Jefferson City, with an on-duty time of 10:00 p.m., on January 17, 1995. Upon taking charge of the train at approximately 10:30 p.m., Claimant found that the five-unit locomotive consist had not been inspected as required by CFR 49 Section 229.21 and Carrier's Operating Rule 30.8.3. Following some discussion with the train dispatcher, Claimant operated Train NPMENS-16 to a siding at mile pole 78.5, arriving at midnight. At approximately 12:15

a.m. on January 18, 1995, Claimant began his inspection of the five-unit consist, and in conducting his inspection, noted certain defective conditions. Claimant did not complete his inspection until approximately 5:00 a.m. Due to the defects Claimant reported, the locomotive consist could not be moved, and a carrier officer, Manager of Operating Practices (MOP) B. L. Lowery, was sent to the scene.

MOP Lowery determined that three of the units Claimant inspected should be removed from service, which necessitated shuffling the order of the units to place an operable unit in the lead so that the consist could be moved. It then turned out that the repositioned lead unit required repair to its brake system which MOP Lowery was able to complete at the scene. MOP Lowery then instructed Claimant to pull his train to mile pole 75.5, where Claimant and his conductor expired under the Hours of Service Law.

By letter dated January 25, 1995, the Carrier notified Claimant of formal Investigation:

"... to develop the facts and place responsibility, if any, in connection with your alleged excessive delay to train NPMENS-16, Engine UP2403 East while working as Engineer near Hermann, Missouri, during the hours of approximately 11:59 PM, January 17, 1995 through 5:10 AM on January 18, 1995."

Formal Investigation commenced February 21, 1995 and concluded April 5, 1995. The Claimant was assessed the discipline which, following appeal by the Organization, is now the subject of this proceeding.

The Board has carefully considered the voluminous record of the handling and all the arguments raised by the parties to this case. The Board must determine from this record whether the Carrier developed substantial evidence that the Claimant intentionally delayed his assignment in his inspection of his locomotive consist. The Board agrees with the Carrier that it need not tolerate an employee's deliberate delay of an assignment. When such intentional delays are proven, discipline may be warranted. However, in this case, we do not think that there was substantial evidence of intentional delay.

The record shows that during the time Claimant performed the inspections along side the main line, eight trains passed that point. This caused an approximate two-hour

delay since Claimant could not perform the inspection work while these trains passed. In accounting for the remainder of the time, the record does not suggest that the Claimant engaged in a deliberate slowdown. Several of the locomotive units Claimant inspected were found to have defects. Since this was concurred in by supervision on the site, it does not appear that the Claimant's inspections were performed frivolously so much as earnestly. The record is not clear that the Claimant was ever instructed as to a particular time allowance for locomotive inspections. Therefore, it cannot be said that Claimant knowingly exceeded a specific inspection time allowance. In these circumstances, the Carrier has not met its burden of proof, and the claim will be sustained. Since the Board has reached its conclusion on the special circumstances shown in this record, this decision should not be relied upon where the factual record is different. Lastly, the Board is taking no position in this case on the ancillary work jurisdiction argument raised by the Organization, nor is it necessary to consider that issue in resolving the narrow disciplinary question presented in this case. Our finding, assuming that the Claimant's Agreement was not violated by his performing the inspections, is simply that there is insufficient evidence in the record before us to conclude that he intentionally delayed his assignment in performing them.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 2nd day of October 1997.