

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24872
Docket No. 44536
98-1-96-1-U-1889

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

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (formerly MoPac)

STATEMENT OF CLAIM:

"Claim of Engineer M. R. Hinkle for all lost time associated with the discipline assessment of Level Four under the Carrier's unilaterally imposed 'Upgrade' Discipline Policy, as well as Claimant's attendance at the investigation, and the clearing of Claimant's record for allegedly exceeding the maximum authorized speed through crossover at MP341.7 on the Hoxie Subdivision on March 7, 1995."

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.

By letter of March 13, 1995, Claimant was directed to appear for an investigation into charges concerning:

"alleged exceeding maximum authorized speed on main track at MP341.7 on the Hoxie Subdivision while making southbound movement from Main #2 to Main #1 through dual control crossover while working as Engineer on Train ASFW1-06 at approximately 9:30 a.m. on March 7, 1995."

Following the investigation, held on March 14, 1995, Claimant was notified, on that same day, of the assessment of a Level 4 discipline against him. A Level 4 discipline under Carrier's "Upgrade" policy consists of thirty days off work without pay, and the requirement that the employee pass a necessary annual operating rules exam or equivalent in order to return to work.

Claimant is, by Carrier's own statement, a "professional Locomotive Engineer and is an excellent representative of a Union Pacific Employee." He also has an unblemished twenty-one year record, and has served in numerous capacities such as a Quality Improvement Team and ADEPT instructor, which bring credit to him and to the Carrier. While Carrier maintains that its "Upgrade" system must disregard such factors and impose discipline in a manner so that it is "the same for all employees -- the excellent ones and the not so excellent ones," in the instant case, this argument cannot prevail.

The Board has carefully reviewed the transcript of this hearing, a task which perforce eluded the Charging/Hearing Officer in light of the proximity of discipline assessment and close of the hearing. That review convinces the Board that there were numerous mitigating factors at play in this incident, not the least of which was the arguably inadequate power supplied by a single engine for the length and weight of the train at issue. It is unrefuted on the record that Claimant accommodated the presence of only a single engine in a professional, exemplary manner throughout the trip in question. Under the circumstances, and in light of the evidence provided by the transcript, an argument can reasonably be made that the discipline assessed falls more properly under the categories in Level 3, than in Level 4. Accordingly, the Board finds that the discipline assessed should be reduced to a Level 3, and Claimant should be reimbursed for the twenty-five additional days he served under the Level 4 discipline assessed.

There is no arbitral precedent to support compensation of Claimant for attendance at the investigation.

AWARD

Claim sustained in accordance with the Findings.

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 5th day of February 1998.