

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24874

Docket No. 44538

98-1-96-1-U-1892

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 J. D. Revenberg, for the clearing of his employment record of notation of a Level 4 under the Carrier's unilaterally imposed 'Upgrade' Discipline Policy and for compensation for all lost time associated therewith (thirty days suspension without pay) including time spent during the investigation."

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.

At the outset, the Organization has raised a procedural objection to the manner in which the decision in the instant case was rendered. The record before the Board indicates that Carrier's officer assessed the discipline at issue immediately after the hearing, prior to the delivery of the tape of the hearing to the reporting service for transcribing.

The facts in this case are complex, and the testimony contradictory at best. A careful review of the transcript by the Board reveals that several crucial issues concerning speed and distance traveled by the train at issue were discussed at great length during the hearing, but with conflicting testimony. The concept of a fair and impartial hearing demands that reasonable consideration of the transcript be made prior to assessment of discipline. Clearly that was impossible in this case. Such haste in rendering a decision lends full support to the Organization's protest that Claimant was prejudged, and not accorded the fair and impartial hearing due him under the Parties' Agreement.

The Board has no choice but to sustain the claim as presented.

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 5th day of February 1998.