

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24877

Docket No. 44541

98-1-96-1-U-1895

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 E. J. Phelan for removal of Level Four under the Carrier's unilaterally imposed 'Upgrade' Discipline Policy, payment for all lost time including the days claimant was at the investigation, and the clearing of Claimant's record for allegedly passing the stop signal (efficiency test) on the DeSoto Subdivision on April 5, 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.

This case involves Claimant's failure of an unannounced field "efficiency test." Specifically, he was charged with failing to stop his train when faced with a "surprise" stop signal. The seriousness of the tests, and the importance to rail safety of passing those tests is not in dispute. At the heart of the issue in this case is whether the test was a fair or reasonable representation of an actual field situation.

The Carrier maintains that an engineer must be prepared to stop within half the range of vision of any stop signal and that, in this case, Claimant failed to do so. Thus, although there was no actual danger, Claimant proved negligent and discipline was warranted.

In contrast to the Carrier officer charging and imposing discipline upon Claimant, the Board has reviewed the transcript in this case carefully. It is unrefuted through the testimony of both Organization and Carrier witnesses that the light supposed to trigger a "stop" reaction in Claimant was placed on the right edge of a railroad tie, and that it was not far from a grade crossing whose signal lights were illuminated and blinking (Tp. 29). Yet, Carrier's officers stated that the test was intended to emulate an EOT device — a device which the officer acknowledged would normally be located visually in the center of the tie and approximately 36 to 40 inches above it (Tp. 27). Claimant maintained that he initially believed the light to be a reflection of the crossing lights, and, when he realized it was not, applied his brakes in an emergency mode, stopping his train two or three engine lengths beyond the test signal.

Without questioning the *bona fides* of the overall program of field testing, the Board finds that in this case, as in First Division Award No. 23906, the tests constructed must accurately measure and truly reflect the "real life" situations they purport to represent. Absent such "content validity" the results of the tests cannot reasonably be used to impose discipline on employees who fail them.

AWARD

Claim sustained.

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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.