

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24887
Docket No. 44589
98-1-96-1-U-1919

The First Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of Engineer J. D. Reeder for the removal of ‘UPGRADE’ discipline Level 2 and all notation of said disciplinary action from Engineer Reeder's employment record. The Organization further claims compensation for all lost time associated with Engineer Reeder's attendance of the investigation held August 30, 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.

Claimant J. D. Reeder was on duty as an Engineer on his regular yard assignment. After performing the first moves of the day, Claimant and his crew (Switch Foreman V.T. Stout) were instructed by the Yardmaster to shove an empty covered hopper car onto Track 201. The car was to be loaded with grain from an overturned car at that location.

The Manager of Train Operations who had been on duty since 3:00 A.M. investigating a derailment which had occurred during the night, overheard the Yardmaster radio instructions to the crew. The Manager of Train Operations began to monitor the movements of Claimant's engine at 9:05 A.M. and observed the Foreman secure the car where it was to be spotted at 10:14 A.M. The Manager approached Claimant and questioned him on why it took him so long to make the move. Not being satisfied with Claimant's explanation, the Manager arranged to have Claimant and V.T. Stout served as follows:

"Arrange to report to the Superintendent's Conference Room, Union Pacific Railroad Company, 2801 Rockcreek Parkway, North Kansas City, Missouri, at 9:00 a.m., Tuesday, August 29, 1995, for a formal investigation to develop the facts and place your individual responsibility, if any, in connection with the report that you caused unnecessary delays to your job YKC09-19 between 9:07 a.m., and 10:14 a.m., on Saturday, August 19, 1995, and the report that you shoved UP 75384 over the public crossing at General Mills without proper protection at the crossing or on the leading end of the car at about 9:38 a.m., on Saturday, August 19, 1995."

The hearing was postponed for one day and was held on August 30, 1995. As a result of that hearing, Claimant was found guilty as charged and issued the following letter:

"Mr. J.D. Reeder
317 High Drive
Raymore, MO 64053-9129
SSN: 498-58-0522

September 5, 1995

Dear Mr. Reeder:

After careful consideration of the facts developed at a formal investigation held on August 30, 1995, you have been assessed a Level 2, for your violation of Rules 6.32.1 and 1.29, contained in the General Code of Operating Rules effective April 10, 1994.

Under the Upgrade Discipline Assessment Table, the violation of Rules 6.32.1 and 1.29 requires a minimum discipline of a Level 2. Your record now stands at Level 2.

Sincerely,
N.A. Angell
Mgr. Operating Practices"

Rules cited in the disciplinary letter are quoted below:

"Rule 1.29 Avoiding Delays

Crew members must operate trains and engines safely and efficiently. All employees must avoid unnecessary delays.

When possible, train or engine crews wanting to stop the train to eat must ask the train dispatcher at least one hour and thirty minutes before the desired stop."

"Rule 6.32 Road Crossings

6.32.1 Cars Shoved, Kicked, or Dropped

When cars are shoved, kicked, or dropped over road crossings at grade, a crew member must be on the ground at the crossing to warn traffic until the crossing is occupied. Make any movement over the crossing only on the crew member's signal.

Such warning is not required when:

- Crossing gates are in the fully lowered position.
or
- It is clearly seen that no traffic is approaching or stopped at the crossing."

This Board has carefully reviewed the transcript of the hearing and all documents submitted into the record. As a result of that review, the Board has concluded that

insufficient probative evidence is contained in the record to support Carrier's findings of guilt. No evidence was produced that Claimant, as the Engineer, unnecessarily delayed progress of the job, just as no evidence exists to support Carrier's claim that the crew shoved a car across a crossing in violation of Rule 6.32. Claimant testified that he visually observed no traffic in the area and slowly moved over the crossing. Carrier did not successfully refute this testimony. Carrier has not carried its burden of proof in this instance. While the Board sustains this claim it denies Claimant pay or expenses for attending 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 8th day of April 1998.