

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24888
Docket No. 44601
98-1-97-1-U-1922

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

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

"The Brotherhood of Locomotive Engineers CNW/UP General Committee of Adjustment requests the Division consider and authorize the claim of Engineer D. Parks (Chicago Freight Terminal) on borrow out status to the Southern Seniority District for all time and miles lost including the time spent at the investigation and to further include \$80.00 per day plus \$50.00 lodging and meal expenses allowed by agreement to borrow out engineers and that all notations of the Level IV Discipline entry be expunged from claimant's service record.

Claimant was required to attend an investigation on July 17, 1996 in the office of the Manager of Terminal Operations, Des Moines, Iowa on the following charge:

"You allegedly occupied Main Track without authority on the Mason City Subdivision at Cambridge, Iowa at approximately 2156 hours on July 6, 1996, while employed as crew members on VPDM 05."

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 D. Parks and a Conductor were operating a train from Mason City, Iowa, to Des Moines. While in route to Des Moines, the Conductor released Track Warrant No. 5445 in error. Track Warrant No. 5335 should have been released. The error was quickly discovered. The Train Dispatcher was notified and the error was corrected. The crew released the track they were on rather than the track they had just left. The crew occupied the track without a warrant for 18 minutes. As a result of this situation, on July 17, 1996, charges were brought against them. These charges are quoted below:

"You allegedly occupied Main Track without authority on the Mason City Subdivision at Cambridge, Iowa at approximately 2156 hours on July 6, 1996, while employed as crew members on VPDM 05."

An Investigation was held. Claimant was found guilty and was assessed an Upgrade Level 4, a 30-day Suspension. He was also decertified as an Engineer for thirty days. The Conductor involved in the incident was found guilty and assessed a Level 4 30-day Suspension. As a result of negotiations between UTU representatives and Carrier officials, as well as procedural shortcomings in the handling of the matter, the Conductor's penalty was reduced to a Level 2 violation with pay for time lost after a twelve-day Suspension. The same penalty was offered to Claimant, but he refused it.

This Board has reviewed the total record of this case, as well as the material and case citations presented by Board Members. As a result of that review, the Board has come to the following conclusions:

(1) In spite of the wording of Rule 1.47, Duties of Trainmen and Enginemen, that "the conductor and the engineer are responsible for the safety and protection of their train and observance of the rules," it is difficult to conclude, based on the facts of this case, that the Engineer is as culpable as the Conductor in this instance. There is no justification for assessing them the same penalty.

(2) While this Board does not have authority to challenge Carrier's right to decertify an Engineer for a rule or safety violation, it does have authority, if not an obligation, to consider the decision of FRA Locomotive Engineer Review Boards in deciding cases involving the violations that resulted in decertification.

(3) In the instant case, the FRA completely exonerated Engineer Parks from all involvement in this incident. The Board sees no reason why it should not do something similar.

(4) The Board has concluded that justice would be served in this case and the integrity of Carrier's position that Rule 1.47 applies in such instances would be maintained by issuing the following decision:

Claimant shall be assessed a Level 1 penalty of a Letter of Warning. Claimant shall be reimbursed for all time lost as a result of Carrier's actions.

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.