

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

**Award No. 24890
Docket No. 44501
98-1-96-1-U-1870**

The First Division consisted of the regular members and in addition Referee Marvin Hill, Jr. when award was rendered.

(Brotherhood of Locomotive Engineers)
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(Pacific Upper Lines)

STATEMENT OF CLAIM:

“Claim of Engineer C.G. Palmer for removal of discipline assessed of Level 4 under the Carrier’s ‘Upgrade’ Disciplinary Policy, compensation for the thirty (30) day suspension associated therewith, as well as all lost time in attendance of the investigation for allegedly passing a signal displaying stop indication in the Kansas City Terminal area.”

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.

On January 5, 1995, Claimant, Engineer C.G. Palmer, a 16-year employee, was called for an on-duty time of 6:00 P.M. at his away-from-home terminal, Kansas City, Missouri, on train KCAS-05. While in departure track No. 306, Claimant and Conductor D. R. Dicus were instructed by the East Bowl Yard Master to set out a bad

order car, the 37th car behind the engine, on the adjacent track, No. 305. The weather was snowy with gusting and swirling winds. By the time the Conductor reached the bad order car, visibility was deteriorating appreciably. The Conductor made the cut and advised Claimant to pull ahead to clear Switch No. 305. Claimant was lined onto the south line (the main line exiting the departure yard toward Osawatomie and Coffeyville, Kansas) to make the set-out move. Claimant proceeded toward Malone Junction as Conductor Dicus counted down the car lengths to stop clear of the track No. 305 switch.

During Claimant's advance toward Malone Junction, he observed a high signal on a mast to his left emanating a red glow through the snow, which he determined controlled movement on the track to his left. The record indicates Claimant had not traversed this portion of the Kansas City Terminal in nearly two years, and on his last experience in this area, the signal governing movement over Malone Junction was a dwarf, or pot signal, to the right. Claimant slowly proceeded beyond said signal, looking for the anticipated right-hand signal until he was instructed to stop by Conductor Dicus. At that point, Claimant was approximately one and one-half engine lengths south of the signal he observed to his left. Shortly thereafter, Claimant was instructed by a voice on the radio, whom he assumed was the East Bowl Yardmaster, to stop and make no additional movement. Claimant stopped his engine approximately one car length beyond said signal.

Approximately 40 to 45 minutes later, Mr. R. D. Vassar, Manager of Yard Operations, mounted Claimant's engine and instructed him to gather up the grips and go with him to pick up Conductor Dicus and then proceed to 6400 Martin, to be tested under F.R.A. Drug and Alcohol Regulations. At that time he was informed that he had gone by the controlling signal at Malone Junction.

Notice of formal Investigation was issued to Claimant and Conductor D. R. Dicus to:

"Arrange to report to the Union Pacific Conference Room, Holiday Inn, 422 Monroe Street, Jefferson City, Missouri, at 9:30 A.M. on Thursday, January 12, 1995, for a formal investigation to develop the facts and place your individual responsibility, if any, in connection with the report that your train passed a signal displaying 'stop' indication without authority at signal # 14 - V2/8 at Malone near Kansas City, Missouri, at about 9:05 P.M. on January 5, 1995, while you were working as crew members on Train KCAS-05."

The Investigation was not convened until January 18, 1995, due to the Carrier's postponement without concurrence of either Claimant or his representatives. During the interim, charges were dropped against Conductor Dicus. He was instructed to appear as a witness.

After the Investigation, Claimant was assessed a Level 4 under the Carrier's "Upgrade" Discipline Policy, which included a 30-day suspension. The 30-day suspension is now before the Board.

The Board has carefully considered the evidence record and all the arguments raised by the parties to this case. The Board must determine from this record whether the Carrier developed substantial evidence that the Claimant violated Operating Rule 245Q (Passing Stop Signal Indication Without Authority). Some procedural issues are also present.

It is undisputed that the Carrier failed to produce the Train Dispatcher in spite of requests by the Organization Representative at the hearing. The Board is also bothered about the delay in the holding of the Investigation within ten days subsequent to notification of the charges, as Section 3 of Article 44 demands. Article 44 includes no provision for the Carrier to *unilaterally* postpone the Investigation beyond the time limits established in Section 3 of the Agreement. It is not demonstrated that exigent conditions beyond management's control prevented a timely Investigation.

With respect to the merits, the Board finds Claimant was operating his train in a safe and careful manner, between four and five miles/hour, while listening for instructions from his Conductor. The weather was inclement with visibility declining. Both Claimant and his Conductor had never seen any formal instructions regarding the relocation of the signal at Malone Junction. Federal Regulation, 49 C.F.R. Part 239, Section 235.5, Paragraph 3, mandates that the Carrier must make application for approval of a discontinuance or material modification of a signal system. (Exhibit "K"). If the Carrier complied with the requirement to make application as required, notice of signal relocation would arguably have been issued to the employees. There is no evidence that Claimant was *ever* instructed in any formal medium of the signal relocation.

In light of the above, the Board concludes that the Carrier erred in imposing a Level 4 discipline upon the Claimant, a 16-year employee with a good employment record.

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 8th day of April 1998.