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**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24894
Docket No. 44564
98-1-96-1-U-1903

The First Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of Engineer N. D. Krig for the clearing of his employment record of Level 3 discipline under the Carrier’s ‘Upgrade’ discipline policy as well as compensation for all lost time.”

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 August 17, 1995, Claimant N. D. Krig, an Engineer, was assigned to work on train MOALMO-17 in CTC territory. At the end of his workday, the Claimant moved his train onto a siding at Tioga, Louisiana. Subsequently, the Claimant was charged and found guilty of occupying the track without authority.

The Organization filed the instant claim on behalf of the Claimant arguing that the Claimant had spoken with the Dispatcher and the Dispatcher had given his "Okay" to the Claimant to tie up his train at Tioga. After the Claimant had returned the train to the siding and tied up at Tioga, he was contacted by the Dispatcher and the Dispatcher informed the Claimant that the Claimant had entered the siding without permission. The Organization argues that the Dispatcher was at fault here. The Organization also contends that the Claimant was not afforded a fair and impartial investigation because the Carrier refused to call the Dispatcher as a witness.

The parties being unable to resolve the issue, this matter comes before this Board.

This Board has reviewed the record in this case and we find that the procedural arguments raised by the Organization are without merit.

With respect to the substantive claim, this Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant bore some of the responsibility for the wrongdoing in this case. However, a thorough review of the lengthy transcript makes it absolutely clear that it was the Train Dispatcher who bore most of the responsibility for the error. The Dispatcher admitted that this was the part of his job that he did not like. The Dispatcher seems to have admitted that he had given instructions that could have been misinterpreted.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary or capricious.

In this case, the Claimant may have been at fault of not knowing all of his responsibilities under operating rule 10.1, but he certainly was not the major reason that the wrongdoing occurred. The blame for that has to rest with the Train Dispatcher. Consequently, this Board must find that the five-day suspension issued to the Claimant was unreasonable and without just cause. Therefore, this Board finds that the five-day suspension shall be removed from the Claimant's record and be reduced to a written warning. He shall be made whole for the time that he lost from work. The written warning should include language making him knowledgeable of the requirements of

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operating rule 10.1 so that in the future if he is given a confusing instruction, he will make sure that he understands it fully before he acts.

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 7th day of May 1998.