

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24900
Docket No. 44570
98-1-96-1-U-1901

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 J. L. Aycock for the clearing of his employment record of Level 4 discipline assessed under the Carrier's 'Upgrade' discipline policy and compensation for all time lost associated therewith as well as lost time incurred during claimant's attendance of investigation held for his alleged violation of Union Pacific Operating Rules 6.27, 5.3 (1(1)) and 5.7."

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 24, 1995, the Claimant, Engineer J. L. Aycock, and his co-workers were aboard Train CHDA 2-24 with unit UP6288 heading toward the North Little Rock, Arkansas terminal from Poplar Bluff at approximately 4:00 P.M. The UP6288 is equipped with an air conditioned North American Style "Quiet Cab." About 100 miles from Poplar Bluff four Carrier officers participated in a torpedo stop efficiency test of the Claimant. At approximately 6:37 P.M. Claimant's train ran over the torpedoes. The Claimant did not

stop. Following the torpedo test, the Claimant encountered a red flag and he was contacted on the radio regarding the torpedoes. The Claimant stopped beyond the red flag. Consequently, the Claimant and Conductor Simmons were immediately removed from service.

Considering the fact that the Carrier officers involved with the testing had never experienced the sound of torpedoes while aboard the new "Quiet Cab", the Superintendent concluded that a reenactment of the incident should be conducted.

Following the reenactment, a formal investigation was held on September 14, 1995, the Claimant was found guilty and assessed discipline of Level 4 under the Carrier's "Upgrade" Discipline Policy.

The Organization filed a claim on behalf of the Claimant contending that several factors attributed to the Claimant's not stopping his train when the torpedoes went off. First, the Organization argues that since the Claimant was aboard a new "Quiet Cab", the insulation of the cab contributed to the Claimant not being able to determine that the train had just passed over torpedoes. In fact, the Organization explains that the Claimant, as well as the Conductor, believed that someone had thrown rocks at the locomotive cab. Second, the air conditioner was on at full capacity and there was a great deal of static on the radio which also added to the muffling of outside noise. The Organization contends that the Claimant was prejudged and that there was no just cause for the Carrier to issue discipline.

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

This Board has reviewed the procedural arguments raised by the Organization and we find them to be without merit.

With respect to the substantive issue, this Board has reviewed the evidence and testimony in this case and we find that the Carrier has not met its burden of proof that the Claimant was deserving of Level 4 discipline, a 30-day suspension, for failing to properly respond to a torpedo and red flag test. Therefore, the claim must be sustained.

The record reveals that the torpedo test was developed many years ago before the introduction of the "quiet cab" operating compartment which was on the new locomotive that was being operated by the Claimant in this case. The new cab is better insulated than the old locomotives, the Carrier admits this, and the Claimant testified that he did not hear the torpedoes and, therefore, did not stop the train on the date in question. The Carrier has

not presented sufficient proof that the explosions were loud enough for the Claimant to hear during the test that was performed on August 24, 1995.

In an effort to bolster its case, the Carrier performed a so-called reenactment. However, the Claimant was not allowed to participate in the reenactment. Moreover, the participants in the reenactment were aware that there were going to be torpedoes exploded during the course of the trip. The Claimant was not aware of this during his trip.

In order to sustain discipline, it is incumbent upon the Carrier to present sufficient proof that the Claimant was in violation of the rules or in some way failed to properly perform his duties. In this case, given the changes to the new locomotives and the conditions that were in existence on the day of the torpedo test, this Board cannot find that the Carrier proved with sufficient evidence that the Claimant should be held responsible for failing to stop when the torpedoes exploded. There was insufficient proof that the sound of the torpedoes was sufficiently loud enough for the Claimant to hear.

There is no just cause to hold the Claimant responsible in this case. Therefore, this claim must be sustained in its entirety.

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 7th day of May 1998.