

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 24969
Docket No. 44617
98-1-97-1-U-1935

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 Chicago &
(NorthWestern)

STATEMENT OF CLAIM:

“The BLE - UP/C&NW General Committee requests the Division consider and authorize the claim of Engineer Miroslav Dragisic for all lost time including time spent at the investigation and removal of discipline entry from claimant’s service record.

Engineer Dragisic was ordered to appear for an investigation on the following charge on April 17, 1996.

‘Your responsibility, if any, for violation of UP Rules GCOR 6.0 and Special Instructions CORA pg. 12-36, when you failed to properly perform your duties when you failed to comply with the IHB dispatcher instructions and occupied the Main track without authority at approximately 1345 hours on April 4, 1996, while employed as crew member of CHNPV03, on duty 11:30 a.m., April 4, 1996 at Proviso.’

Subsequent to the investigation, claimant was assessed with a thirty day Level IV Discipline by the Union Pacific Railroad.”

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.

This claim arose when the Claimant was found guilty of violating GCOR 6.0 and CORA Rule 251 when he operated train CHNPV03 between C. P. Hill and Broadview, Illinois, without a Form "D" clearance on April 4, 1996. He was assessed a 30-day suspension.

The Organization filed the instant claim on behalf of the Claimant contending that the Claimant followed the instructions of his Conductor who, in turn, misunderstood the Dispatcher's instructions. Furthermore, the Organization contends that the discipline assessed the Claimant in this instance was excessive. The Carrier denied the claim.

The Board reviewed the procedural arguments raised by the Organization and finds them to be without merit.

With respect to the substantive issue, the Board reviewed the record and testimony and finds that sufficient mitigation exists on Claimant's behalf to set the discipline aside. Claimant properly relied on the advice of his Conductor with respect to the authority for and nature of the move they were to make.

The above conclusions concerning this record have already been reached by the Locomotive Engineer Review Board (LERB), which overturned the Carrier's revocation of Claimant's Engineer Certification in connection with the same incident. In Locomotive Engineer Review Board, Review and Determinations Concerning the Chicago & Northwestern Railway Company's Decision to revoke Mr. Miroslav Dragisic's Locomotive Engineer Certification, FRA Docket Number EQAL 96-52, the LERB, in finding that Carrier could not hold Claimant responsible for occupying Main Track 1 without a Form D, held that:

"... there were sufficient mitigating circumstances to excuse Petitioner's actions and justify a reversal of the railroad's decision. The Board agrees

that Petitioner was not properly qualified to operate on IHB joint operations according to the provisions of Sec. 240.229. The record is clear that Petitioner had no training on or experience with the operations or physical characteristics of IHB nor was he listed as a qualified engineer on the IHB. In addition, UP failed to produce any evidence that he was qualified to operate on IHB trackage.

The Board also finds that Petitioner acted reasonably in relying on the conductor's verbal confirmation that their train had permission to enter the main track against the current of traffic. The Board's finding is justified in light of the fact that Petitioner had no knowledge of IHB procedures, including the requirement to receive a Form D before entering the main track. Thus, the Board finds that there are enough mitigating factors to excuse Petitioner's actions and necessitate a reversal of UP's decision to revoke his certification."

In light of the Board's concurrence with the LERB's recognition of the mitigating circumstances present in this case, the claim must be sustained.

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 21st day of December 1998.