

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION

Award No. 24973  
Docket No. 44627  
98-1-96-1-U-1918

The First Division consisted of the regular members and in addition Referee Peter R. Meyers 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 Engineers J. E. Diamond and R. I. Hutchcroft for the removal of 30 days actual suspension pursuant to Carrier’s ‘UPGRADE’ Discipline Policy. The Organization further claims on behalf of Engineers Diamond and Hutchcroft all back pay for all time lost, all fringe benefits, that their records be cleared of this disciplinary action with vacation, seniority and any other rights restored. Additionally, that Carrier contact F.R.A. to clear the respective records of these men to effectively eliminate the revocation of their Engineer Certificate which occurred as a result of the aforementioned discipline being imposed.”

**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 Claimants were assessed a 30-day suspension for passing a signal. Claimants were operating CBNL-12 and after getting a go ahead from the Yardmaster to depart Track 355 at Council Bluffs, Iowa, Claimants proceeded to move eastward toward the main line. Claimants moved about 12 car lengths out of Track 355 when they passed Signal No. 24. Claimants were instructed by the Dispatcher to stop their train and they were further ordered by the Yardmaster to move back onto Track 355. Claimants were then interviewed by the Manager of the Yard and subsequently removed from service.

The Organization filed the instant claim on behalf of the Claimants contending that Signal No. 24 is difficult to see. The Organization points to a previous incident involving the same signal in which another Engineer was exonerated for passing Signal No. 24 because it could not be seen. Furthermore, the Organization argues that the Claimants were improperly given the "go-ahead" advice by the Yardmaster.

The Board reviewed the evidence and testimony and finds that with respect to Engineer Diamond, there is sufficient evidence in the record to support the finding that he was guilty of violating Carrier Rules for passing a signal requiring him to stop and back his train onto a different track. Claimant Diamond's defense that he had never been there before is simply not enough to excuse his behavior.

With respect to Engineer Hutchcroft, the Board finds that the Carrier has not presented sufficient evidence in the record to support the finding that Claimant Hutchcroft was guilty of any wrongdoing in this matter. Claimant Hutchcroft was taking his direction from the more senior Engineer Diamond. He relied totally on Diamond in his actions, and therefore, Hutchcroft should not be held responsible.

Consequently, the Board finds that the 30-day suspension of Engineer Diamond shall be upheld. The 30-day suspension of Claimant Hutchcroft shall be rescinded and he shall be made whole.

#### AWARD

Claim sustained in accordance with the Findings.

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**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**