

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 24997  
Docket No. 44642  
99-1-97-1-U-1967

The First Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Locomotive Engineers  
(Union Pacific Railroad Company)

**STATEMENT OF CLAIM:**

“Claim of Engineer R. S. Stroud that the level 3 discipline be removed from his record, and that he be paid for all time lost, and vacation rights unimpaired.”

**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.

At the time of the incident precipitating this claim, Claimant was working as a Yard Engineer. The road train he was to move was too heavy for Claimant's engine to handle by itself, and he paired up with a helper engine. In the process, Claimant's lead unit generated slack action, and a crew member was injured. Claimant received notice to appear for an Investigation into the incident on December 20, 1996. The hearing was held on January 30, 1997. Following the hearing, Claimant was notified that he was assessed a Level 3 discipline (5 days' suspension) under the Company's discipline policy.

The discipline was appealed and subsequently progressed in the usual manner, including conference on the property.

At the outset, the Organization maintains that the Carrier did not afford Claimant a fair and impartial Investigation. It asserts that the notice of Investigation was materially changed with respect to the witnesses to be called and that the hearing officer did not give the Claimant's witnesses a fair opportunity to testify. The Board has reviewed the notices of Investigation (initial and amended) and finds no fatal procedural flaw therein. Further, a thorough review of the transcript in this case indicates that the Claimant and his representative were able to mount an informed and comprehensive dissent. Accordingly, the Board finds no basis for sustaining the Organization's procedural objections.

With respect to the merits of this case, the Carrier has asserted that through some break-down in communications, the Claimant failed to keep the other Engineer informed of his engine's movement in compliance with Carrier's Operating Rules. While there does seem to have been some "static" which interfered with some of the communication between the Claimant and the other yard crew, there is no indication that Claimant was negligent in his communications. Further, the injured crew member testified at the investigation that he was aware of, and had anticipated, the slack, but was injured nonetheless. The Engineer of the other yard crew testified that he, too, was aware of the move, which the Foreman confirmed, as well.

In light of the foregoing, it cannot be said that the Carrier has met its burden of presenting "clear and convincing" evidence that Claimant was responsible for the injury suffered by the switchman. Thus, the Board has no choice but to sustain the instant claim as presented.

#### AWARD

Claim sustained.

Form 1  
Page 3

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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 2nd day of June 1999.