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**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25003

Docket No. 44710

99-1-98-1-U-2004

The First Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former
(Chicago & North Western)

STATEMENT OF CLAIM:

“Claim in behalf of Engineer J. Guereca, Union Pacific Railroad former Chicago and North Western Transportation Company, for compensation for all lost time including time spent at the investigation and that this incident be removed from claimant’s personal record and that he be removed from the Union Pacific Discipline System known as Upgrade when he was investigated on July 18, 1997 on the following charge:

‘violation of Union Pacific Rule 5.3.7, which caused damage to a customers end of track bumping post on July 11, 1997 at approximately 02:00 hours, while working as Engineer on West Chicago Job YWC63.’

Claim premised on the 1996 Dual Track System Agreement, Discipline Rule Attachment A and is attached as Employee’s Exhibit A.”

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.

Following an Investigation, Claimant was assessed a five day suspension for improper train handling. Certain facts in this case are not in dispute. On July 11, 1997, Claimant was shoving six cars to make a joint to two cars standing on an industry track. When the cars coupled, they were shoved into a bumping post at the end of the track. It is evident Claimant's foreman had given an instruction to Claimant to proceed two car lengths. According to Claimant, he stopped after moving one car length because he heard no further instruction. After stopping, the slack ran out, causing the cars to couple to the two cars on the track and strike the bumping post.

The facts in this case can lead to only two conclusions. Either Claimant did not stop within half the distance specified, as required by Carrier's rules, or the foreman overestimated the distance when he told Claimant "ahead two." Carrier apparently made this determination based upon a pre-Investigation conducted by Manager Train Operations Bagdasarian, who concluded that Claimant did not stop. Thus, only Claimant was charged with this offense. When Claimant testified he was not given an accurate car count, the Carrier relied upon Bagdasarian's testimony to conclude Claimant was guilty. This was not a fair and impartial Investigation where the hearing officer was responsible for determining whether Claimant or his foreman was telling the truth. The Carrier had already determined the foreman was in compliance with the Carrier's rules before the hearing began. Thus, it was pre-ordained that Claimant would be found responsible for the incident. The Agreement, therefore was violated.

AWARD

Claim sustained.

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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.