

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25026
Docket No. 44739
99-1-98-1-U-2026

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

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

STATEMENT OF CLAIM:

Claim of Engineer W. Austin for removal of Level 2 Discipline under the Carriers "UPGRADE" discipline policy and all lost time associated therewith, including time spent at the investigation and with seniority 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.

On December 14, 1996, while Claimant, Engineer Austin, was handling a train in the North Little Rock, Arkansas, Terminal, three cars of that train derailed. Claimant was charged with violation of Rule 6.5, "Handling of Cars Ahead of Engines," and 7-4, Precautions for Coupling or Moving Cars and Engine.

An Investigation into the matter was held on February 3, 1997. As a result of the Investigation, Claimant was found responsible for the derailment and assessed a Level

2 discipline under Carrier's "UPGRADE" Discipline Policy. The case could not be resolved on the property and was submitted to the First Division of the Railroad Adjustment Board for resolution.

This Board has reviewed the record as presented and finds it lacking a major document. The transcript of the February 3, 1997, Investigation is not included in the record. While excerpts from the Investigation transcript were included in the parties' submissions, this Board cannot be sure how pertinent or persuasive they might be without the advantage of the total transcript. The Carrier in discipline cases bears the burden of proof. The Board requires the total record of a case for review. In the instant case, the record presented is inadequate for the Board to make a proper determination. The Board therefore is required to conclude that the Carrier did not carry its burden of proof and sustain the claim.

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 16th day of June 1999.