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**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 25043

Docket No. 44794

99-1-98-1-U-2063

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 Transportation Company (former CNW)

STATEMENT OF CLAIM:

"Claim in behalf of Yard Switchman Jose Guereca, SS# 346-72-1008, Union Pacific Railroad former Chicago and North Western Transportation Company, for compensation for all lost time including time spent at the investigation, 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 the following charge:

'your failure to properly observe safety practices which help to eliminate and help avoid falling, fouling and stumbling hazards, while performing service on PR89030 at approximately 12:50 P.M., on September 27, 1997 at the receiving yard at Proviso.'"

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 September 27, 1997, Claimant was working as a Yard Brakeman in Proviso Yard. In the process of performing his duties in the Yard, Claimant tripped over a bolt protruding from an angle bar. He fell to the ground and injured his knee. Claimant promptly reported the accident and was taken to the hospital to have his knee checked. On October 1, 1997, he was charged with failure to follow safety practices. An Investigation in the matter was held on January 19, 1998. As a result of that hearing, Claimant was found guilty as charged and assessed a Level 1 discipline under Carrier's UPGRADE Discipline Policy. Since Claimant was already at a Level 3 in the procedure, he was moved to Level 4 and assessed a thirty-day Suspension.

A review of the record of this case reveals that a decision by the Hearing Officer was rendered four days before the transcript of the Investigation was produced. The hearing involved Claimant, his Union representative, and a Carrier witness. The Investigation transcript ran to 105 generously spaced pages. The Organization contends that the rendering of a decision in this case without the advantage of the transcript of the Investigation constitutes prejudgment and failure to provide a fair and impartial Investigation. The Organization has cited as support of its position numerous Division and Board Awards on the issue. This Board takes special note of two cited Awards on this property with these parties: First Division Award No. 24935, Referee LaRocco, and Public Law Board No. 6040, Award No. 13, D.A. Eischen, Chairman. In both of these cases, the tribunals sustained the claims on procedural grounds, chastising the Hearing Officer for making a decision without benefit of the record of the Investigation before him.

This Board also takes the position that the deciding Officer errs in his responsibility if he renders a decision without benefit of the written record of the Investigation before him.

#### 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 27th day of July 1999.