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**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25083

Docket No. 44776

00-1-98-1-U-2053

The First Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of Engineer J. P. Houston for removal of Level 4 Discipline under the Carriers unilaterally imposed “UPGRADE” discipline policy and reinstatement to service 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 May 30, 1997, Claimant was operating train MNLSH-29 from North Little Rock to Texarkana. At approximately 2:00 A.M., Claimant arrived at the west end of Texarkana Yard. He pulled the train south toward the Main Line. The Conductor lined the hand-thrown cross-over switch that would allow Claimant to leave the west end of the yard and enter Main Track No. 2.

Claimant observed that Signal No. 18 on Main Track No. 2 was red, indicating stop. He called the Yardmaster and asked for a clear signal, and stopped the train after entering Track No. 2 to wait for the signal. At some point thereafter, he proceeded past the signal. Just before he got to the back lead switch, he noticed that it was lined against him and he immediately stopped the train. However, the train stopped about an engine length over the switch.

On June 6, 1997, Carrier notified Claimant to report for an Investigation on June 12, 1997. The notice charged Claimant with allegedly running a red signal. The hearing was postponed to and held on July 1, 1997. On July 10, 1997, Claimant was advised that he had been found guilty of the charge and assessed discipline at UPGRADE Level 4, which amounted to a thirty day suspension.

Carrier contends that it proved Claimant's guilt by substantial evidence. Carrier relies on the results of tests performed on Signal 18 which indicate that it was functioning properly at the time of the incident. The Organization, relying on Claimant's testimony and the testimony of the engineer who was waiting to relieve Claimant, argues that Carrier failed to prove the charge by substantial evidence.

Claimant testified that about a minute after he stopped to wait for a proceed signal, he received it. However, with the switch still lined against Claimant, the signal, if it was working properly, still should have been red.

The Manager Signal Maintenance testified that, and the log entered into the record reflects that, the last indication prior to the incident that Signal No. 18 gave was a red, stop. The Manager Signal Maintenance also testified that his department conducted a complete operating test on Signal 18 at about 10:00 A.M. and compared the signals when they were lined up to how they showed on the dispatcher's board. He took no exception to the operations.

The record thus presents a conflict between Claimant's testimony that the signal gave a proceed indication and the signal logs and results of follow-up tests. If these were the only evidence present in the record, we would defer to the finding made on the property that Claimant ran a red signal. Certainly, no one has suggested that Claimant would have run a red signal deliberately. The inference supported by the signal log and the follow-up tests is that Claimant testified honestly but mistakenly.

However, as other awards have recognized, there are circumstances where a carrier may not rely solely on the inferences from log sheets and mechanical tests in the face of substantial contrary evidence. See, e.g., PLB 4656, Award No. 9; PLB 2050, Award No. 46. After a careful review of the record, we conclude that the instant claim is such a case.

First, the allegation in the instant case is not simply that Claimant failed to see a red signal. Claimant saw the red signal, called the Yardmaster for a proceed signal and stopped the train to await the proceed signal. According to Claimant's testimony, he proceeded only after he got the signal that he had requested. It is unlikely that Claimant, having first stopped the train because of the red signal and called for a proceed signal, would have proceeded if he did not get an appropriate signal.

Second, Claimant's testimony was corroborated by the engineer who was waiting to relieve Claimant. The engineer testified that he was standing on the porch of the crew change building watching the train to make sure that it was the engine that he was to operate. He observed the Conductor throw the cross-over switch. He continued:

"I was talking to the limo driver and looking at the signal. At that time, it was red. Me and the limo driver talked a minute or two. And I'm standing there looking at the signal. (finger snap) It popped up yellow . . ."

It has been suggested that the engineer's vision may have been interfered with by the lights of the engine. However, the engineer testified that at first he could not see because the engine's headlight was aiming at the porch, so he stepped to the side of the porch and leaned against the rail. From that vantage point, he was able to see the engine and the signal. Consequently, there simply is no evidence to support the speculation that the engine's lights interfered with the engineer's vision at the time the engineer observed the signal change from red to yellow.

Therefore, on the record presented, we are unable to say that Carrier proved Claimant's guilt by substantial evidence. Claimant's discipline must be overturned. However, as a consequence of this incident, Claimant's FRA certificate was revoked for one month. Therefore, Claimant shall not be entitled to compensation for time held out of service unless and until his certificate revocation is overturned.

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AWARD

Claim sustained in accordance with the Findings.

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 18th day of January 2000.