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**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 25085  
Docket No. 44783  
00-1-98-1-U-2034

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

**STATEMENT OF CLAIM:**

“Claim of Conductor M. E. Hackelman for removal of Level One Discipline under the Carrier’s ‘UPGRADE’ discipline policy as well as reimbursement for all lost time associated with attending 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 March 4, 1997, Claimant was called for duty on Train CHLI-04 at 9:30 P.M. The train ran from Chicago to Salem, Illinois. When the train arrived at Salem, the MTO at Salem noticed that the second car from the locomotive consist was placarded as carrying hazardous materials, carrying liquid petroleum gas. Such cars are required to have at least five buffer cars between them and the locomotive.

Claimant ultimately was found responsible for the misplacement of the hazardous material car and assessed discipline at UPGRADE Level One, a written warning.

It is apparent from the face of the transcript that the discipline cannot stand. Claimant testified without contradiction that when he reported for duty, the Yardmaster on duty told him to get his engines, get his train and depart. The Yardmaster indicated that the train was in proper order and ready to go.

Claimant testified that when he coupled the engines onto the train, he noticed that the lead car was not the same car listed on the consist. However, he took no exception to the train because the lead car was not dangerous and there were no dangerous cars indicated on the documentation that he had. Had Claimant taken exception and checked the train, the erroneously placed hazardous car would have been discovered and could have been corrected.

It is clear from the transcript that Claimant was not entirely blameless. However, it is also clear that others bore even greater responsibility, including those responsible for erroneously placing the tank car so close to the engines and any other employees who may have actually been aware of the error and failed to make any effort to get it corrected.

The only Carrier witness was the charging officer, the MTO at Salem. However, he made no effort beyond speaking with the MTO at Chicago Yard Center. He did not speak with the Yardmaster who was on duty at the time Claimant came on duty, or with the Yardmaster who was on duty at the time Claimant's train was made up, or with the Switch Foreman of the crew who made up the train. The MTO seemed content to charge Claimant alone with responsibility for this incident.

The inadequacy of the MTO's investigation was aggravated by Carrier's denial of the Organization's request to have the Yardmaster who was on duty when Claimant came on duty and the Yardmaster who was on duty when Claimant's train was made up as witnesses. It is apparent on the face of the transcript that Claimant was the victim of disparate treatment. Under these circumstances, the discipline imposed on Claimant may not stand. See PLB 5383, Award No. 493; see also First Division Award No. 24894.

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**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 18th day of January 2000.