

**Form 1      NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

**Award No. 25092  
Docket No. 44801  
00-1-99-1-U-2068**

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

**PARTIES TO DISPUTE:** (Brotherhood of Locomotive Engineers  
(Union Pacific Railroad Company (former Chicago and  
( Northwestern Transportation Company)

**STATEMENT OF CLAIM:**

“The Brotherhood of Locomotive Engineers UP (CNW) request the Division consider and authorize the claim in behalf of Engineer J.G. Giblin, SS No. 480-40-9097, Union Pacific Railroad former Chicago and North Western Transportation Company, for compensation for all lost time including time spent at the investigation, that claimant be removed from the Union Pacific Discipline System known as Upgrade and that any and all reference to this incident be expunged from claimant's personal record when he was investigated on the following charge:

“While you were employed as Locomotive Engineer on Train MKSIT-12 on March 13, 1998 when your engine IMRL 332, failed to stop before any part of the train or engine passed stop signals given with a displayed red flag at approximately M.P. 192.65 on the Mason City subdivision, indicating a possible violation of General Code of Operating Rule 6.27, and your violation of Federal Regulation 49 CFR, Part 240.117(e)(1).”

**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 13, 1998, Claimant was assigned as Engineer on MKSIT-12. Claimant had two units of power. He was instructed to leave three quarters of his train on the main track at Flint and bring a portion of his train to be set out to the West Yard. He was then directed to return with the light units to his train at Flint. Both units were heading north. Both units also had dirty and oily windows that restricted vision. It was the decision of the Engineer and the Conductor that because of the condition of the trailing unit, with no radio and no control levers, the unit used for the original move would be used for the return move to Flint, with the Conductor riding the lead unit, acting as the eyes of the Engineer. This move would be made using the radio for giving signals. On this return move, the light engine consist ran by a red flag placed on the track by a test team conducting field surprise and efficiency tests. The test was set up during daylight hours within Mason City Yard limits. As a result of this action, Claimant, as well as his Conductor, was charged with violations of Carrier's Rule 6.27 and Federal Regulation 49CFR, part 240.117(e)(1).

A hearing in the matter was held on March 18, 1998, at Carrier's facilities in Des Moines, Iowa. As a result of that hearing, Claimant was found guilty as charged and assessed a Level 4 penalty under Carrier's Upgrade Progressive Discipline Policy. Level 4 calls for a 30 day Suspension without pay and revocation of Claimant's Engineer certificate for 30 days. A claim was filed protesting this action. It was denied by Carrier at all levels and has been progressed to this Board for review and final resolution. A petition was also filed with the Locomotive Engineer Review Board requesting it overturn Carrier's decision to revoke Claimant's Engineer Certificate.

The record of this case reveals that Claimant did operate his engine past the red flag placed at Mile Post 192.65 by the test committee. That is a serious

violation of the operating rules. If it was the only element of this case, the penalty imposed would be appropriate and the decision of this Board would end here.

In considering the action taken by Carrier, this Board is required to go beyond the singular fact that the Claimant operated his engine past the red test flag. There are numerous mitigating circumstances that must be considered before a final resolution of this case is rendered. Chief among them are the following:

- (1) The windows on both units involved were oily and dirty. Vision through the windows was blocked or restricted.
- (2) There was no indication of excessive speed during the incident.
- (3) The trailing unit (on the return trip, the forward unit), while having dirty windows, did not have a workable radio on board, nor was it equipped with brake handles.
- (4) The Engineer and Conductor agreed that Claimant would operate from the trailing unit on the return trip to Flint and the Conductor would ride the forward unit and act as the Engineer's eyes, communicating with him by radio.
- (5) Claimant is a long-term employee with a clean record.
- (6) The Locomotive Engineer Revision Board overturned Carrier's action in this instance and restored Claimant's Engineer Certification.

This Board has concluded that, based on the total record of this case, considering all of the mitigating circumstances involved and the Locomotive Engineer Review Board's decision to overturn Carrier's action in this instance, it would be inappropriate for it not to modify the penalty imposed. The Board therefore directs that the penalty be reduced from a Level 4 to a Level 2 and Claimant be paid for all lost time and benefits.

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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 28th day of February, 2000.