

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25096

Docket No. 44758

00-1-98-1-U-2042

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of Engineer D.L. Hood for removal of Level 4 Discipline under the Carriers unilaterally imposed 'UPGRADE' discipline policy and for 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 April 18, 1997 Claimant was assessed a Level 4 discipline after an Investigation which was held on April 9, 1997. Carrier found that Claimant had violated System Timetable Rule 245Q and GCOR Rule 9.5.

The facts developed at the Investigation reveal that Claimant was the Engineer on YDU32. While travelling south on the TRRA the train stopped at signal #6. After over six minutes, the crew received a diverging clear signal. At signal #11 on Union Pacific trackage,

the crew stated the signal was yellow. The train proceeded to the next signal which was red and stopped. After 25 minutes the crew was informed it had run through the power switch at signal #11. The crew was removed from service.

The Carrier bears the burden to prove the Claimant violated the rules. The whole crew was assessed similar discipline. However, the Carrier canceled the ground crew's discipline and paid them for time lost. In the settlement letter the Carrier said the following:

"The only objective evidence available in this case as to the aspect of the signal in question was contained in the CAD report. Since no one at the hearing was able to read and interpret the CAD report, the key piece of evidence was never developed in handling on the property."

The Carrier argues that the settlement was without precedent and not to be cited in any future cases. Therefore, this Board is barred from citing the settlement. The Carrier is in error. First, this is not a future case. It covers the same incident. Second, the commitment not to cite was with the UTU, not the BLE.

The Carrier has admitted it failed in meeting its burden.

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 28th day of February, 2000.