

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25137

Docket No. 44840

00-1-99-1-U-2090

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

STATEMENT OF CLAIM:

"Claim of Engineer H. D. Hammer for removal of Level 4 Discipline under the Carriers "UPGRADE" discipline policy, claiming all lost time (including time attending the investigation) and clearing this notation of discipline from Engineer H. D. Hammer's record."

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.

Claimant, Engineer H. D. Hammer, and Claimant, Conductor F. L. Reynolds, were assigned as the crew on Train AGFSII-27 on February 27, 1998. The train was to travel from Griffin Tower, Indiana, to Chicago Heights, Illinois, over trackage of the Elgin, Joliet and Eastern Railroad, hereinafter referred to as the "EJ&E." The Claimants were not qualified on the EJ&E trackage and, as such, requested a pilot to accompany them on the run. The Carrier (UP) provided Engineer R. Martin as the pilot. There is no question that Engineer Martin was an experienced Engineer and was

qualified for pilot service on the trackage involved in this case. Operating procedures on the EJ&E require that the train receive a track warrant from the EJ&E Train Dispatcher. The pilot copied two track warrants from the EJ&E Dispatcher, TW195 and TW200. TW195 authorized train movement from Crossover No. 4 at Griffin to Mile Post 34. TW200 authorized train movement from Mile Post 34 to Crossover No. 3 at Chicago Heights on main track No. 2. Engineer Pilot Martin advised Engineer Hammer and Conductor Reynolds that TW200 authorized their train to proceed to Chicago Heights on main track No. 1. That direction by the pilot was in error and a direct contradiction of TW200. Quite simply, Train AGFSH-27 occupied Main Track No. 1 without authority for a period of time. It proceeded about two miles on Track No. 1, when it came upon a track gang working on the track. The train stopped and, at this point, Pilot Martin realized his error.

There is no question that the pilot, as well as the Claimants, had made a mistake when they proceeded on Track No. 1 without a proper track warrant. The Carrier officials from the EJ&E and the Union Pacific Investigated the incident and issued charges against Pilot Martin, Engineer Hammer, and Conductor Reynolds. They were all charged with failure to perform a proper job briefing and occupying EJ&E Main Track No. 1 without proper authority. Pilot Martin signed a waiver of Investigation, took full responsibility for the incident, and accepted a Level 4 assessment under the Carrier's UPGRADE Discipline Policy.

Engineer Hammer and Conductor Reynolds chose to challenge the charges against them. A formal Hearing in the matter was convened on March 19, 1998. As a result of that Hearing, the Claimants were found guilty as charged and assessed a Level 4 penalty. Level 4 carries with it a 30-day Suspension without pay and development of a corrective action plan upon return to work.

The Board has reviewed the extensive record of this case and has concluded that the Carrier had no rational justification for assessing the Claimants the same level of discipline given to the Engineer Pilot. There is no question that the pilot was the "boss" of the train. He acted as the only qualified crew member. He obtained the track warrants. He gave directions to the Claimants on the train's movement. He was in charge. The fact that the pilot directed the Claimants to proceed on Main Track No. 1 in error cannot be blamed on the Claimants. While the Board is fully aware of the seriousness of a train occupying a track without authority and the responsibility of all crew members to make sure their train is proceeding in a proper manner, we cannot

conclude that the Claimants were equally at fault for errors by the pilot and should receive the same penalty.

It is this Board's decision that the discipline assessed the Claimants be reduced from Level 4 to Level 2. The Claimants should be paid for all lost time and benefits beyond the penalty imposed at Level 2.

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 13th day of July, 2000.