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**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 25218

Docket No. 44849

01-1-99-1-I-1653

The First Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**PARTIES TO DISPUTE:** ( **Brotherhood of Locomotive Engineers**  
( **Canadian National / Illinois Central Railroad**

**STATEMENT OF CLAIM:**

“Claim of Illinois Central Railroad Engineer J. K. Foster for removal of thirty (30) days suspension which was activated from a deferred status from Reprimand assessed for the alleged violation of IC Operating Department Rules B, D, and H at approximately 12:10 hours on Monday, July 21, 1997, on President’s Island, Memphis, TN.”

**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 July 21, 1997, a collision occurred at Dock Street at the Channel Avenue grade crossing at President’s Island, Memphis, Tennessee, between Train RPI-14, Engine 1467, and a truck when the truck driver failed to park his truck clear of the grade crossing and the train. The train’s crew consisted of the Claimant and crew members Conductor S. J. Peregoy and Brakeman W. D. Wilson.

At the time of the accident, Conductor Peregoy radioed the President Island Clerk, H. L. Ferguson, and asked him to call the city police, as the train had been in an accident. Ferguson came to the crossing to inspect the accident, in which the train and the truck incurred minor damage. The conductor notified Trainmaster K. E. Creel approximately two hours later to notify him he was faxing a report of the accident.

In a letter dated July 22, 1997, from Trainmaster/Gen. Agent W. D. Hall, the Claimant was informed he was to attend a formal Investigation on July 29, 1997, to determine whether he failed to follow the instructions of Superintendent's Bulletin No. 44, dated January 1, 1997, in connection with the aforementioned accident. Following the Investigation, in a letter dated August 5, 1997, the Claimant was informed that he was being assessed a reprimand for violating Illinois Central Operating Department Rules B, D, and H. Further, the letter stated that because of the presence on his record of a letter dated May 1, 1997, in which a 30 day suspension had been deferred pending no further disciplinary action within the next six months, the discipline of 30 days became effective as of 12:01 A.M., August 6, 1997, through 11:59 P.M., Thursday, September 4, 1997.

The Organization appealed this decision in a letter dated October 3, 1997. That appeal was denied and the matter was progressed in the usual manner, up to and including the highest Carrier Officer authorized to handle claims.

It is the Carrier's position that the Claimant was aware of his responsibilities in regards to complying with the Operating Rules in question and with the responsibilities of the Conductor. The Rules cited were: B. "Reporting and Complying with Instructions"; D. "Reporting Injuries and Defects"; and H. "Rules and Regulations, and Instructions." Additionally, the Carrier asserts that the Claimant knew the conductor had failed to comply with the Operating Rules when the conductor reported the accident to the Clerk, yet the Claimant failed to notify the proper authority of the incident. The Carrier also contends that the Claimant was aware that the Clerk had failed to report the accident to the proper authority.

The Organization's position is that the responsibility of reporting the accident is solely that of the conductor in keeping with Superintendent's Bulletin #44. That Bulletin reads in pertinent part as follows:

"Effective immediately, all conductors must report to the Trainmaster on duty all accidents and derailments immediately after the accident occurs.

Proper reports must be submitted by the conductor prior to going off duty and mailed to the Trainmaster's Office, Johnston Yard.

So that there will not be any misunderstanding, derailments and accidents must be reported when they happen and not prior to going off duty."

Further, the Organization contends that the Claimant should not be disciplined for not reporting the accident when he heard the Conductor report the accident to the Clerk, whom the Conductor believed reported the accident, in turn, to the proper authority.

At issue in this case is whether or not the Claimant, as an Engineer, shares equal responsibility for reporting an accident with the Conductor. Consideration of this issue is clearly presented in First Division Award 25130, in which Referee La Rocco held in pertinent part:

"... Inasmuch as the Claimant was working under the specific instructions and tutoring of the Pilot Engineer, the Claimant was legitimately entitled to place some reliance on the expertise of the peer trainer. Since the train speed had increased from 9.2 miles per hour to at least 14 miles per hour and perhaps, as high as 17 miles per hour, the Pilot Engineer should have been sensitive to this surge in speed and brought the speed to the Claimant's attention ...

... this Board emphasizes that ordinarily a Pilot Engineer and the operating engineer are jointly culpable for operating rule infractions, but, the Carrier, in this particular case, failed to prove that the Claimant knew or should have known that his train had not cleared IHB lead. Absent this proof, we must sustain the claim."

In accordance with Award 25130, it was not unreasonable in the instant case for the Claimant, as an Engineer, to place reliance upon his Conductor to fulfill his responsibility to report the accident properly. Bulletin No. 44 makes it clear that the Conductor was responsible for reporting the accident at issue. The Claimant heard the

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Conductor make the initial call to the Clerk to report the accident. The Claimant, therefore, had no reason to believe that the Conductor had not completed his responsibilities in reporting the accident. Accordingly, the claim must be sustained.

**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 14th day of May, 2001.