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**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 25227

Docket No. 44902

01-1-99-1-U-2130

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

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

**STATEMENT OF CLAIM:**

"Claim of Engineer K. J. Graves for removal of Discipline, claiming all lost time (including time attending the investigation), fringe benefits, and clearing this notation of discipline from Engineer Graves' 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.

The Claimant was removed from service on November 3, 1998 following an incident that occurred on November 2, 1998. An Investigation was held on December 8, 1998 and the letter of discipline was issued December 17, 1998. The Carrier found that the Claimant violated Item 14 of Terminal Railroad Special Instructions and Greater St. Louis Operating Rules Page 11-13 Note 3. The Carrier found that while the Claimant was engineer on Train CPAEY-02 the train occupied the main track of the Terminal Railroad without proper authority.

The record reveals that on the date in question the Claimant was to pick up the train from the former SSW yard then proceed a short distance over TRRA tracks to Carrier's Madison Yard via the "NS cutoff."

The Claimant had never operated from the SSW yard to Madison via the NS cutoff and he had not been to South Pekin, the final terminal, in six months. As a result he asked that a pilot engineer be provided; the Carrier complied with his request. When the pilot arrived at the SSW, he told the conductor that he forgot his work shoes, and asked the conductor if he thought he could get the train to Madison without him. As a result the pilot went home to get his work shoes with the intention of meeting the train at Madison Yard. The Claimant was not involved in the conversation between the conductor and the pilot.

The crew then proceeded but missed the switch to the NS cutoff and the train got onto the TRRA main without authority.

The Organization argues that the error was not the Claimant's fault. It states that the NS cutoff switch was not adequately marked and that he relied on his conductor.

There is no question that the Claimant's train was improperly on the TRRA without authority. However, it is difficult to find fault with the Claimant. His conductor never asked the Claimant if he knew how to get to Madison Yard from the SSW before he let the pilot go home for his work shoes.

The Carrier has the burden to prove the Claimant violated the Rules. In this case the Claimant admitted his ignorance of the route of the train and the Carrier acted properly by providing a pilot. However, the conductor and the pilot improperly overruled the Carrier. We find that the Carrier has failed to meet its burden in this case.

#### AWARD

Claim sustained.

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**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 29th day of May, 2001.