

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25234

Docket No. 44810

01-1-99-1-U-2072

The First Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (former Chicago and
(North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim in behalf of Engineer L. Horn, SS No. 336-36-1711, Union Pacific Railroad former Chicago and North Western Transportation Company, for compensation for all lost time including time spent at the investigation, that this incident be expunged from claimant’s personal record and that he be removed from the Union Pacific Discipline System known as Upgrade when claimant was investigated on the following charge:

“to develop the facts and place individual responsibility, if any, in connection with the charge that while working Job #PR08, as the engineer operating with Locomotive CNW #4307, on July 21, 1998, between approximately 13:55:08 and 13:58:31, your assignment allegedly exceeded the maximum authorized speed per Timetable No. 2, effective 0001, October 29, 1995 [sic] while operating between Western Avenue and Clinton Street on the Geneva Subdivision.”

Claim premised upon the 1996 BLE/UP System Discipline Agreement.”

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 August 17, 1998, following a formal Investigation which was convened on August 11, 1998, the Carrier notified the Claimant, an Engineer, that he was being assessed a Level IV on the Carrier's Upgrade Disciplinary policy for an alleged excessive speed violation on July 21, 1998. The Level IV also required the Claimant to serve a 30-day suspension.

The Carrier first notified the Claimant on July 28, 1998, that it would hold an Investigation on July 30, 1998 to determine if the Claimant committed a speed limit violation while shoving passenger cars between California Avenue and the Chicago Passenger Terminal on July 21, 1998. The Investigation was not held on July 30. It was not convened until August 11, 1998. The record contains a dispute about the reasons for the delay. The Carrier submits that the Claimant's local representative requested a postponement to August 11. On the other hand, the local representative vigorously denied agreeing to put off the Investigation until August 11 but he was amenable to postponing the Investigation until August 3.

Section 5 of the System Disciplinary Rule provides that the Carrier must convene an Investigation within ten days after the date of the notice of charges unless the Investigation is postponed for good cause. While the Rule does not say so, the parties can certainly agree to a postponement beyond the ten-day limitation period. Absent the Organization's consent, the Carrier may still unilaterally postpone the Investigation provided it shows good cause for holding the Investigation beyond ten days after the date of the notice of charges.

Under the peculiar circumstances of this case, the Board concludes that the record does not contain sufficient evidence showing that the Claimant's local representative concurred with a postponement to August 11 and the Carrier did not demonstrate good cause for the postponement. The Organization and the Claimant were

ready to go forward with the Investigation on July 30, but the Carrier's primary witness, the Manager of Operating Practices, was suddenly unavailable, evidently due to a dental appointment. The Claimant's representative graciously agreed to postpone the Investigation to August 3, 1998.

Thereafter, the United Transportation Union Local Chairman (the Claimant's Conductor was also a principal at the Investigation) apparently sought an extension until August 11. What is not clear is whether the UTU Local Chairman had ever concurred with resetting the case to August 3. In any event, the record does not contain any evidence that the Claimant's representative agreed to this postponement. The Carrier's August 3, 1998 letter, which rescheduled the Investigation for August 11, is somewhat misleading because it states that a Union representative requested the postponement but does not state which representative. In view of the Claimant's representative's denials that he agreed to the postponement, there is nothing in the record demonstrating that the Carrier obtained the Claimant's representative's concurrence to a postponement beyond August 3, 1998.

Since the Organization did not agree to the postponement, the Carrier must come forward with a good reason to unilaterally postpone the Investigation. On the property, the Carrier did not articulate any reason for convening the Investigation on August 3. We need not consider whether a postponement request by another labor organization constitutes good cause because the Carrier did not raise that argument in this case. Nevertheless, even if UTU's postponement request is good cause for unilaterally postponing the Investigation, the Carrier should have promptly and courteously informed the Claimant's representative that the other local chairman was requesting a postponement. This would allow the Claimant's representative a chance to argue against the postponement or, if he was persuaded that the other local chairman's request was reasonable, the Claimant's representative would have presumably agreed to the delay. In sum, the Carrier created this predicament by inexplicably ignoring the position of the Claimant's representative.

Where the Carrier does not offer a reason for the postponement and does not have the Organization's agreement to a postponement, then the Investigation must be held within the ten-day period in the rule. Public Law Board No. 5089, Award No. 57. August 11, 1998 was beyond the ten day limitation. Thus, the claim must be sustained due to the Carrier's violation of Section 5 of the System Disciplinary Rule and we are precluded from addressing the merits of the disciplinary sanction.

While the Board sustains the claim, the Carrier also revoked the Claimant's Locomotive Engineer Certification. In a decision issued on March 11, 1999, the Locomotive Engineer Review Board of the Federal Railroad Administration affirmed the revocation. See, Review and Determination, EQAL-98-89. Therefore, even though the Board is sustaining the claim, we cannot award the Claimant pay for time lost. First Division Award No. 24935. Similarly, we cannot make any finding with regard to the Claimant's fitness to perform as an Engineer. However, we can order the Carrier to expunge the Level IV from the Claimant's disciplinary record. To reiterate, we cannot lift the revocation of the Claimant's Engineer certification even though his disciplinary record is void of the Level IV.

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 5th day of June, 2001.