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**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25263
Docket No. 44833
01-1-99-1-U-2084

The First Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood of Locomotive Engineers)
PARTIES TO DISPUTE: (**(Union Pacific Railroad Company (former Chicago and**
(Northwestern Transportation Company)

STATEMENT OF CLAIM:

“Claim on behalf of Proviso Service Unit Engineer R. Garcia, Union Pacific Railroad former Chicago and Northwestern 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 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 determine responsibility, if any, in connection with the charge that while working Job 7102 as the engineer on Train #622, Tuesday, June 23, 1998, at approximately 7:23AM, you allegedly exceeded the maximum authorized speed per Track Bulletin Form A, No. 49576, dated June 22, 1998, when you operated your train on Track 2 at MP 31.9 on the Harvard Subdivision. This indicates a possible violation of General Code of Operating Rules, Third Edition, effective April 10, 1994, and System Timetable No. 2.’

Claim premised on the BLE/UP System Discipline Agreement of June 1996.”

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 June 23, 1998, the Carrier notified the Claimant of its offer of either a proposed discipline of Level 4 as outlined in its Waiver of Hearing Form or a notice to appear for an Investigation. The Carrier so notified the Claimant as a result of the following charge:

"... while working Job #7102 as the engineer on Train #622, Tuesday, June 23, 1998, at approximately 7:23AM, you allegedly exceeded the maximum authorized speed per Track Bulletin Form A, No. 49576, dated June 22, 1998, when you operated your train on Track 2 at M.P. 31.9 of the Harvard. This indicates a possible violation of the General Code of Operating Rules, Third Edition, effective April 10, 1994, and System Timetable No. 2."

The Carrier further notified the Claimant that depending on the results of the Investigation and Hearing, his qualification requirements for the position of Locomotive Engineer may be affected. The Claimant was being withheld from service pending the results of the Investigation.

After one postponement, the Hearing took place on July 16, 1998. On July 23, 1998, the Carrier notified the Claimant that he was being assessed a discipline of Level 4, 30-days actual suspension, effective June 24, 1998. The Carrier notified the Claimant that he would be returned to work on July 24, 1998. The Carrier further informed the Claimant that he no longer met the qualification requirements for the position of Locomotive Engineer and that the revocation imposed was for a period of 30-days.

The Organization filed a claim on behalf of the Claimant, arguing that the Carrier failed to hold the Investigation within the applicable time limits specified by the Discipline Rule per the parties' Agreement. The Organization argues that the Carrier did not contact the Claimant or his representative concerning any postponement of the Claimant's Investigation. The Organization argues that the postponement was at the request of the United Transportation Union, but not the Claimant or his representative. The

Organization maintains that the United Transportation Union's postponement request was for the Investigation into the Conductor's alleged violation of Rule 6.10 and not the Claimant's alleged violation of Rule 6.31. The Organization claims that the Claimant and his representative appeared at the Carrier's offices on June 29, 1998, the original date of the Hearing, and only then were apprised that the Hearing was postponed to July 16, 1998. As such, the Organization argues that the Carrier nullified its right to prosecute and assess discipline in connection with the charge against the Claimant because the Hearing was not conducted within ten days after the date of the notice as required by Item 5 of the Discipline Rule. The Organization also asserts that the discipline assessed the Claimant is discriminatory when compared to the discipline assessed to his conductor and indicated prejudgment of the Claimant's guilt by the Carrier. The Organization argues that Rule 6.31 holds the Conductor and Engineer jointly responsible for complying with the maximum authorized speed limit, yet disparate charges were leveled at the Claimant and his Conductor. The Organization claims that since the Claimant and his Conductor were charged with separate violations, the Investigations could have been held separately, but the Carrier refused to do so even though the Claimant was ready on June 29, 1998. The Organization claims that the Claimant has over 20 years of service as an Engineer and that on June 23, 1998, while operating Train No. 622, he received Track Bulletin No. 49576 requiring that he reduce the speed of the train from 70 m.p.h. to 30 m.p.h. at MP 31.9. The Organization maintains that witnesses, as well as the Claimant, testified that Train No. 622 slowed from 70 m.p.h. to 45 m.p.h. before entering the 30 m.p.h. speed restriction at MP 31.9. The Organization further argues that the Claimant testified as to the underlying issues of task overload in the locomotive cab environment and that numerous cases have been handled where task overload contributed to a lapse or misjudgment on the part of the commuter engineer alone in the cab. However, the Organization argues that the Carrier refused to allow an Organization witness to testify as to the task overload issue.

The Carrier denied the claim, arguing that substantial evidence of the Claimant's culpability was presented at the Hearing in connection with the charge that he exceeded the maximum authorized speed per Track Bulletin Form A, No. 49576. The Carrier claims that the Claimant was in possession of Bulletin Form A, No. 49576 at the beginning of his trip on the date in question and reviewed the contents of the bulletin with his Conductor. The Carrier contends that the Conductor had ensured that the Claimant was aware of the speed restriction, but that the Claimant simply failed to comply with the instructions that governed the movement of his train and can only blame himself. The Carrier argues that the Claimant's speed in passing MP 31.9 was approximately 45 m.p.h. and not 30 m.p.h. as was required, and, therefore, the Claimant violated Rule 6.31 justifying a 30-day suspension without pay. The Carrier also contends that although the postponement of the Hearing

was at the request of the United Transportation Union, which represented the Conductor, there was good cause to postpone the Claimant's Hearing. In addition, the Carrier argues that a postponement does not require mutual consent. The Carrier asserts that good cause existed under the terms of the BLE Discipline Rule for the postponement. The Carrier argues that the Hearing involving the Claimant and the Conductor could not have been split because one Hearing has always been held covering the entire crew involved in a given incident. The Carrier maintains that the Claimant received a fair and impartial Hearing and that the discipline is justified.

The parties being unable to resolve the issues at hand, this matter came before the Board.

The Board has reviewed the procedural arguments raised by the Organization with respect to the timeliness of the Hearing, and we must find that the Carrier violated the timeliness Rule by holding a Hearing outside of the time limits set forth in the Agreement. Therefore, the claim must be sustained on procedural grounds.

The record reveals that the incident at issue allegedly took place on June 23, 1998. On June 23, 1998, the Claimant was issued a notice informing him that the Carrier was recommending a Level 4 discipline; and if he wanted to go to Hearing, the formal Investigation would take place in the Carrier's offices on June 29, 1998. Neither the Claimant nor his Organization requested a continuance of that Hearing. The record reveals that both the Claimant and the Organization representative showed up for the Hearing on June 29, 1998, since they had not received any notification of any postponement, nor had they applied for one. When they showed up, they were informed that the Hearing had been postponed and would not take place until July 16, 1998. The Hearing in this case did take place on July 16, 1998, and the Carrier notified the Claimant that he was being assessed a Level 4 discipline after that Hearing.

The Discipline Rule requires that the Carrier issue the Claimant a written notice of specific charges against him within ten days after the appropriate Carrier Officer knew or should have known of the alleged offense. The Carrier complied with this Rule since it issued the Notice of Investigation on the same date as the alleged wrongdoing on the part of the Claimant. However, the Discipline Rule also requires that "unless postponed for good cause, the investigation will be held no later than ten days after the date of the notice." The record reveals that the Hearing did not take place until July 16, 1998, 23 days after the notice to the Claimant. There was no request by the Claimant or his Organization for a continuance of the Hearing date

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It is true, as the Carrier argues, that the Conductor's representative at the United Transportation Union, requested a continuance. However, there is no showing that the Claimant or his representative was given notice, or even an opportunity to object to that continuance. The Carrier relies on the language "unless postponed for good cause," but there is nothing in the record that shows that there was good cause for the postponement. The Carrier simply indicates that it postponed the Hearing because of the request by the United Transportation Union. There is no showing what the reason for that request was, nor is there any showing that the reasons therefore were any good. There was no postponement agreed upon by the Claimant or his representative in this case. Moreover, since there was no showing of good cause for the postponement, the Board must find that the Carrier violated the Rules requiring that a Hearing be held within ten days after the Notice of Investigation is issued, and the Claimant's discipline must be removed from his personnel file and he shall be made whole.

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 17th day of September, 2001.