

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25291
Docket No. 45050
02-1-00-1-U-2233

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

(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of Engineer T. Thacker for removal of Discipline, requesting immediate reinstatement, claiming full back pay (including time attending the investigation), fringe benefits, vacation and seniority rights unimpaired, and clearing this notation of discipline from Engineer Thacker'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.

On March 9, 2000, the Carrier dismissed the Claimant from its service as a result of a formal Investigation held on March 2, 2000. The Carrier found that the Claimant had violated Rule 30.8.2 by failing to inspect the locomotive used on January 22, 2000. Such a violation of this Rule would be a Level 2 Discipline, but because the Claimant was already at a Status of Level 4, this violation was sufficient to cause the Claimant's dismissal.

The Rule which led to the dismissal of this employee with over 28 years of service reads as follows:

"30.8.2 When Inspection is Required

Each locomotive in service must be inspected daily. Determine whether the locomotive needs to be inspected by checking the Inspection Record Card located in the locomotive cab. This may be UP Form 25044, or the equivalent form from another railroad.

Union Pacific locomotives have an entry in the 'REMARKS' section at the bottom of the blue card (Form FRA F-6180-49A) which reads 'Do Not Use After: mm.dd.yy'. Verify that the locomotive has not passed this date.

A. Record of Previous Inspection

If the Record Card indicates that the locomotive was inspected the previous day, complete the current day inspection prior to 2359 to allow the locomotive to remain in service, following this procedure:

1. If your tour of duty will go beyond 2359, you must perform the locomotive daily inspection prior to 2359.

Contact the train dispatcher, yardmaster, or other proper authority to determine the location for completing the daily inspection.

or

2. If you have time to reach your final terminal before 2359, you should make the inspection at that time unless instructed by the proper authority that the inspection will be made prior to 2359 by:

The Mechanical Department

or

The relieving engineman

B. No Record of Previous Inspection

If the record indicates that the locomotive was not inspected the previous day, or there is no record on the locomotive, inspect the locomotive consist before it is placed into service on the current day."

The Claimant was assigned to the Engineers Extra Board and was called to work LMC40-20, a local working out of Topeka, Kansas. The Claimant was called for 9:00 A.M. After completing the day's work the assignment tied up at Topeka at 5:45 P.M.

When reporting for duty the Claimant checked the daily locomotive inspection card and noticed that the locomotive had been inspected on January 21, 2000. Therefore, it was not necessary to inspect the engine prior to its use.

The Carrier argues that the Claimant violated its Rules when he failed to inspect the locomotive prior to going off duty.

The Organization argues that the locomotive was "in date" the entire time it was in use by the Claimant and there was no requirement for this Engineer to do the inspection.

A close look at the Carrier's Rule shows that it does not say what Carrier employee is required to inspect the locomotive. The only portion of the Rule that requires the Engineer to inspect the locomotive is when it is "out of date." In this case the previous inspection had been performed by the Carrier's Mechanical Department employees.

The Carrier's Rule implements the Federal Railroad Administrative Regulation 229.21. The Regulation at paragraph (c) states:

“(c) Each Carrier shall designate qualified persons to make the inspections required by this section.”

The Carrier has not furnished any bulletin notice requiring engineers to inspect the locomotive on assignment LMC40 on any or all days.

The Carrier has the burden to prove the Claimant violated its Rules. The Organization's position is well taken. The Claimant never operated a locomotive which was “out of date” and Rule 30.8.2 is unclear as to requiring Engineers to inspect locomotives which are “in date.” The Carrier has failed to meet its burden.

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 January, 2002.