

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 25301

Docket No. 44938

02-1-99-1-U-2143

The First Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

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

**STATEMENT OF CLAIM:**

“Claim of Engineer James B. Maynes for removal of Discipline, claiming all lost time (including time attending the investigation), fringe benefits, and clearing this notation of discipline from Engineer Maynes’ 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 issued a Level 2 discipline under the Carrier’s UPGRADE Policy for failing to clear a crossing by a minimum of 250 feet. According to the Carrier, the Claimant left the rear car of his train within 59 feet of the crossing.

The Board notes that the discipline imposed upon the Claimant’s Conductor was reversed by Public Law Board No. 5613, Award 138, holding as follows:

“Claimant was involved in a somewhat complicated procedure where he would put his train in a siding and after certain trains had passed go for more power. He was charged with failing to clear and protect certain roads. We find that the Carrier did not provide all the testimony necessary to make its case. Thus, there is no conclusive showing of Claimant’s violation.”

Upon our review of the record in this dispute, we find that the conclusions reached by Public Law Board No. 5613 are equally applicable to the Claimant herein. Accordingly, we find the Agreement was violated and the discipline must be reversed.

**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 25th day of February, 2002.