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NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25383
Docket No. 45020
02-1-00-1-U-2224

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

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim in behalf of Engineer Daniel Grigalunas, SS No. 329-40-3349, herein after referred to as claimant, Chicago Freight Terminal, Union Pacific Railroad Northern Region, for compensation for any and all lost time including time spent at the investigation, that he be removed from the Union Pacific discipline System known as Upgrade and any and all reference to this incident be expunged from claimant's personal record when he was investigated on the following charge:

'your failure to stop for a stop board that was protecting track work on Main Track No. 1 at Milepost 27.5, located at CP Canal on the IHB Railroad which resulted in occupying a main track without proper authority at approximately 0830 hrs on May 9, 2000 while employed as engineer on 1X89-09.'

Claim premised on 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.

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This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

While operating on IHB trackage on May 9, 2000, the Claimant's train passed a stop board protecting track work. According to the Carrier, the Claimant failed to secure permission from the Foreman in charge prior to passing the stop board. Consequently, he was directed to attend a formal Investigation at which he was charged with failing to stop for the stop board and occupying a main track without proper authority. Following the Investigation, the Claimant was assessed a Level 4 discipline in accordance with the Carrier's UPGRADE Policy. This required him to serve a 30-day suspension.

While there is no dispute that the Claimant operated his train past the stop board, the Organization contends he obtained permission from the Foreman prior to doing so. The evidence against him was provided by two IHB Officials and one Union Pacific Official. None of these witnesses was present at the scene of the incident, but they all based their testimony upon interviews they had conducted with the Claimant, his Conductor and the Track Foreman. Thus, the basis of the Carrier's case that the Claimant violated the Rule regarding the stop board was the testimony of an IHB Road Foreman/Trainmaster as to what the Track Foreman had told him. The Organization had requested the Track Foreman as a witness, but he was not made available by the Carrier.

The Carrier has an obligation to make material witnesses available at a disciplinary Investigation. In this case, it was the word of the Track Foreman against that of the Claimant. It was unreasonable for the Carrier to make its disciplinary decision based solely upon hearsay testimony as to what the Track Foreman had said. The Carrier's failure to call the Foreman as a witness deprived the Organization of the opportunity to cross examine him to determine if he might have had a conversation with the Claimant, and might have given him permission to proceed past the stop board. For this reason, we must reverse the discipline.

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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 5th day of September 2002.