

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION

Award No. 25392

Docket No. 45080

02-1-01-1-U-2246

The First Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim in behalf of Conductor G. S. Mallinger, SS No. 478-82-0112, hereinafter referred to as claimant, Council Bluffs, Service Unit, Union Pacific Railroad, Northern Region, for compensation for any and all lost time or miles including time spent at the investigation, that this incident be expunged from claimant's personal record, and that claimant be removed from the Union Pacific Discipline System known as Upgrade, when claimant was investigated on the following charge:

'At approximately 0415 on February 3, 2000, while employed as a conductor on train EBOBV-02, you continued handling equipment once it had been discovered being defective and used excessive force in handling said equipment at approximately MP 219.9 on the Boone Subdivision.'

Claim premised on UTU Schedule Rule 83."

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 February 4, 2000, the Carrier directed the Claimant to report for an Investigation. The notice charged the Claimant with continuing to handle equipment after discovering that the equipment was defective and using excessive force in handling equipment on February 3, 2000, at 4:15 A.M. on the Boone Subdivision. The Hearing was held on May 2, 2000. On May 9, 2000, the Carrier advised the Claimant that he had been found guilty of the charge and in violation of Rules 1.1.4, 82.4 and 70.1 and had been assessed discipline at UPGRADE Level 2, one day of alternative service and development of a corrective action plan.

Although the Organization has raised a number of arguments in its Submission, we find it unnecessary to reach them. The Carrier failed to file a Submission with the Board. Therefore, in accordance with well-established precedent, we must sustain the claim as presented due to the Carrier's default. See, e.g., First Division Awards 23871, 23596, 23577. Furthermore, by not filing a Submission, the Carrier has failed to present the Board with the transcript of the Hearing. Therefore, the Board is forced to conclude on the record before us that the Carrier failed to carry its burden of proof with respect to the charges against the Claimant. See First Division Award 25026. For both of these reasons, the claim must be sustained.

#### 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 23rd day of October, 2002.