

****CORRECTED****

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25476

Docket No. 45861

03-1-02-1-U-2941

The First Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim in behalf of Engineer R. A. Huffman, Union Pacific Northern Region, Twin Cities Service Unit, for reinstatement to service with full seniority and vacation benefits, compensated for any and all lost time including the time spent at the investigation and while removed from service prior to the investigation, reimbursed for any and all medical expenses while claimant was dismissed from service, and that this incident be expunged from claimant's personal record. Engineer Huffman was required to appear at an investigation on July 3, 2001 at Fort Dodge, Iowa on the following charge:

‘to develop the facts and place individual responsibility, if any, in connection with alleged violation of the General Code of Operating Rules(s) 1.1, 1.47, 1.6, 6.22, 6.28 and SSI Item 7-A (paragraph 2) when you allegedly were careless of safety to yourself and others when Conductor Heiter operating a locomotive consist consisting of (3) locomotives without proper authorization and license which resulted in a collision when Engineer Huffman operated train GCRYCR-31 through the siding at Grand Junction failing to stop his train at the south switch, subsequently, striking the (3) locomotive consist operated by Conductor Heiter at Grand Junction, IA at approximately 1830 Hrs. on June 5, 2001 at MP 1.5 on the

Tara Subdivision while you were working as crew members on GCRYCR-31 at Grand Junction, IA on duty at Ft. Dodge at 1515 Hrs. on June 5, 2001 and your violation of Federal Regulation 49 CFR, Part 240.117(e)(2).”

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.

By notice dated June 7, 2001, the Carrier charged the Claimant, an Engineer, with allegedly engaging in a series of negligent and unsafe acts on June 5, 2001.

At the Investigation held on July 3, 2001, the Claimant and his Conductor related the moves that they made at Grand Junction, Iowa, on June 5, 2001.

The Conductor encountered a three-unit consist sitting on the west leg of the wye track. The Conductor, who was unqualified and unlicensed as an Engineer, operated the consist through the west leg of the wye to the main track. The Conductor declared that he moved the consist to save time.

The record contains a dispute regarding whether the Claimant authorized the Conductor's activity, but the Claimant conceded that he was aware that the Conductor was operating the power and he did not take any steps to stop the Conductor.

As the Conductor moved the consist through the siding switch, the Claimant moved his train slowly toward the switch but, when the Claimant's train reached the switch, the consist was still fouling the switch. The front unit of the Claimant's train collided with the second unit of the consist and the unit also sideswiped the northern most unit in the consist. Fortunately, nobody was injured.

Immediately after the mishap, the Manager of Train Operations and the Manager of Operating Practices interviewed the Claimant and the Conductor. They also inspected the locomotives and the accident site. The Claimant admitted that, despite placing the train in emergency, he could not stop before the collision. The Managers testified that it took more than a day to clear the tracks because of problems with pumping fuel out of the units.

On June 7, 2001, the Superintendent of the Twin Cities Service Unit issued the disciplinary notice imposing a Level 5 on the Claimant, which is permanent dismissal. The Federal Railroad Administration revoked the Claimant's certification as an Engineer for six months.

According to the Organization, the Carrier also discharged the Conductor, but the Carrier reinstated the Conductor to service on or about October 5, 2001. Thus, the Organization charged that the Claimant is the victim of disparate discipline.

The Organization raises a threshold procedural issue. The Organization alleged that, because the transcript of the July 3, 2001 Investigation is undated, the Superintendent issued the July 8, 2001 disciplinary notice without first having reviewed the transcript. Stated differently, the Organization contends that without a date showing when the transcription was completed, the Carrier cannot verify whether the Superintendent reviewed and studied the transcript before deciding on the proper quantum of discipline. The Organization argues that because of the holiday, the transcript could not have been completed by July 8, 2001. The Carrier responds that the System Disciplinary Rule does not require the transcript to be dated.

Sections 2 and 9 of the System Disciplinary Rule read:

"Locomotive engineers will not be disciplined without first being given a fair and impartial investigation except as provided below.

They may, however, be held out of service pending investigation, but it is not intended that an engineer be held out of service for minor offenses.

* * *

A written decision will be issued no later than 10 days after completion of the hearing. The notice will be sent by U.S. Mail to the last known address of the engineer and to the BLE Local Chairman."

The Investigation held on Tuesday, July 3, 2001, commenced at 10:32 A.M. and concluded at 6:35 P.M. The transcript is 227 pages long, with approximately 56 pages of attached exhibits (including about 20 pages of photographs). The next day, July 4, 2001, was a holiday. The Superintendent issued the disciplinary notice on Sunday, July 8, 2001.

In First Division Award 25299, we ruled that even though no rule requires the Carrier to date the transcript, the omission of a date raises the possibility that the deciding official received the transcript after the official assessed the discipline. We further observe that imposing discipline without review of the record is grounds for reversing the discipline. The Board also held in First Division Award 25389 that the Carrier assumes the risks inherent in its decision not to date the transcript.

Section 2 of the System Disciplinary Rule mandates the Carrier to afford charged engineers a fair and impartial Investigation. If the deciding official has not thoroughly reviewed and studied the transcript, the deciding official cannot render a disciplinary decision predicated on the evidence adduced at an Investigation.

In this particular case, it is virtually impossible that the Superintendent read an Investigation record consisting of 227 pages of transcript and an additional 56 pages of exhibits (albeit, he could quickly look at the photographs) before July 8, 2001. Besides reading the transcript, the Superintendent would have to evaluate the evidence before reaching his disciplinary decision which would require some time for study and consideration. The Investigation was not concluded until after normal work hours on July 3, 2001. The following day was a holiday. Two workdays came after the holiday followed by a weekend. This four-day period is not sufficient time to transcribe the lengthy record and allow the Superintendent to review the record.

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 19th day of September 2003.