

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION

Award No. 25929

Docket No. 45482

03-1-01-1U-2623

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

PARTIES TO DISPUTE: ( (Brotherhood of Locomotive Engineers  
(Union Pacific Railroad Company (former Chicago &  
( Northwestern Transportation Company)

STATEMENT OF CLAIM:

“Claim in behalf of Engineer R. O. Neimeyer (hereinafter referred to as claimant), SS No. 323-70-5612, Union Pacific Railroad Northern Region, Illinois Service Unit, that claimant be compensated for any and all lost time including time spent at the investigation, that claimant be removed from the Union Pacific Discipline System known as Upgrade, and that this incident be expunged from claimant’s personal record when claimant was investigated on December 21, 2000 on the following charge:

‘while employed as engineer on train OJRPL-15 on November 25, 2000 at approx. 1545 hrs. you allegedly failed to anticipate and protect yourself from slack action that allegedly occurred at Dixon, IL causing an injury to your yourself.’

Claim premised upon 1996 BLE 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.

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 regularly assigned as an Engineer in the Proviso Engineer Freight Pool. On November 25, 2000, he supervised a student engineer in the operation of a loaded coal train, from Clinton, Iowa, to Proviso Yard. During the road trip, as the coal train was having difficulty ascending a steep grade located just east of the Dixon Depot, suddenly and unexpectedly, a fire and explosion occurred on the train's lead engine, UP8172. Upon orders from the Claimant, the student engineer brought the train to an emergency stop and the Claimant immediately contacted the appropriate emergency personnel. The fire was contained, and the Claimant and crew safely exited the train. According to the record, sometime during the incident, the Claimant injured his right hand. The conductor and student engineer, fortunately, were not harmed.

Following an Investigation and Hearing conducted pursuant to the 1996 System Discipline Agreement negotiated by the parties, the Claimant was found guilty of violating GCOR Rule 81.7.2 by failing to protect himself from the train's slack action. As a result, he was assessed a Level 1 discipline (Letter of Reprimand) in accordance with the Carrier's UPGRADE policy.

The Board reviewed the extensive record in this case as well as the comprehensive arguments made by both the Carrier and the Organization in support of their respective positions. The Board finds that the incident that occurred on the claim date was sudden, unexpected and could not have been reasonably anticipated by either the Claimant or crew. The record is devoid of any evidence that the Claimant could have prevented the injury under the circumstances here, and there is no proof that he violated Rule 81.7.2 or that slack action precipitated the injury. The Carrier bore the burden of proving that discipline was warranted in this case. Based on the Board's review of this record, the majority finds insufficient evidence of the Claimant's guilt, and the Carrier's

burden of proof, therefore, was not met. See First Division Award 25415 and Award 29 of Public Law Board No. 5943.

Therefore, the discipline assessed should be removed from the Claimant's record, and the Claimant should be compensated for any time lost as a result of attending the December 21, 2000 Investigation.

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 29th day of October 2003.