

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 26024
Docket No. 45519
04-1-01-1-U-2635

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 in behalf of Engineer V. C. Cooksey, (hereinafter referred to as claimant), Union Pacific Railroad Northern Region, Chicago Terminal Complex, that claimant be compensated for any and all lost time, including time spent at the investigation and time held out of service by General Superintendent D. K. Barnes, that claimant be removed from the Union Pacific Upgrade Discipline Policy and that this incident be expunged from claimant’s personal record when claimant was investigated on March 7, 2001 on the following charge:

‘your alleged failure to properly secure the equipment on ZOABP7 which resulted in derailment and damage to locomotives UP9645 and YO4116 east end of track 105 and 106 Global Two approx 0205 hrs 2/16/01 while employed as crew member on 3X20-15 on duty 2230 2/15/01 at Global Two.’

Claim premised upon the 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.

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 16, 2001, the Claimant was involved in a derailment after he cut the engine consist off of an intermodal train and the cars rolled into two engines. The Claimant and his conductor were withheld from service and directed to attend an Investigation in connection with this incident. The Investigation was originally scheduled for February 19, but was not held until March 7, 2001. According to the Carrier, the Investigation was postponed twice at the request of the conductor. Following the Investigation, the Claimant was assessed a Level 3 discipline in accordance with the Carrier's UPGRADE Policy. This discipline required him to serve a five-day suspension, which was considered as having been served during the period the Claimant was withheld from service.

With regard to the merits of the discipline, we find that the Carrier's charge against the Claimant was proven. It is apparent that both the Claimant and his conductor thought the other had set hand brakes on the standing cars. Obviously, neither had. Rather than simply making such an assumption, the prudent course would have been for the two employees to discuss who was going to perform this work. The failure to set the brakes was the proximate cause of the derailment, and properly subjected the Claimant to discipline. The Board takes no exception to the assessment of a Level 3 discipline in this case.

The Organization first objects to the Carrier's unilateral postponement of the Investigation. The record reflects these postponements were granted at the request of the Conductor's representative, a BLE Local Chairman. Inasmuch as the Carrier has an obligation to grant a reasonable postponement for good and sufficient cause, we do not find the Claimant's rights were violated by such postponements. Based upon the record before us, we conclude the Claimant was properly notified of the Investigation and the subsequent postponements.

The Organization also objects to the fact that the Claimant was withheld from service pending the Investigation. It notes that he was out of service for 23 days in a case that resulted in only a five-day suspension. The Agreement gives the Carrier the right to hold an Engineer out of service pending an Investigation, but makes it clear that "it is not intended that an engineer be held out of service for minor offenses." We do not agree with the Organization's argument that withholding the Claimant from service constituted prejudgment, but we do agree that this was not an offense that warranted such action. In this respect, we find the Agreement was violated. Accordingly, we will direct that the Claimant be made whole for wages and benefits lost as a result of being held out of service, except for the period of time attributable to his five-day suspension.

AWARD

Claim sustained in accordance with the Findings.

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 15th day of June 2004.