

PUBLIC LAW BOARD NO. 4081

PARTIES	CHICAGO AND NORTH WESTERN)	
	TRANSPORTATION COMPANY)	
)	AWARD NO. 38
TO	AND)	
)	CASE NO. 40
DISPUTE	BROTHERHOOD OF LOCOMOTIVE)	
	ENGINEERS)	

STATEMENT OF CLAIM:

The Brother of Locomotive Engineers Chicago NorthWestern General Committee of Adjustment requests this Board to allow Engineer B. D. Brandmeyer, Des Moines District, to be compensated for all time lost and removal of discipline entry from his record as a result of discipline assessed following investigation on the following charge:

'Your responsibility in connection with your failure to stop for lighted red fusee at Sheffield, Iowa at approximately 3:55 p.m. on November 28, 1981 while employed a member of crew on Extra 4629 South.'

Subsequent to the investigation, Engineer Brandmeyer was assessed thirty (30) days actual suspension under Discipline Notice No. 1486. Claim premised on BLE/CGW Article 37. **Copy of BLE/CGW Article 37 attached as Employee's Exhibit A.**

HISTORY OF DISPUTE:

On November 28, 1981 Claimant was operating Engine 4629 South near Sheffield, Iowa with the long hood of the engine leading. A Traveling Engineer conducting an efficiency test in the area placed torpedoes approximately at MP 174.7 and further south

laid a lighted ten-minute red fusee at approximately 3:50 p.m. Claimant's train passed the red fusee without stopping at approximately 3:55 p.m.

On November 30, 1981 the Carrier notified Claimant to appear for formal investigation to determine his responsibility for the train's failure to stop for the red fusee. After several postponements, the investigation was held on April 1, 1982. On April 6, 1982 the Carrier notified Claimant that as a result of the investigation he had been found responsible for failing to stop his train for the red fusee and was assessed thirty days suspension.

The Organization grieved the discipline. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151, et seq. The Board also finds it has jurisdiction to decide the dispute in this case. The parties waived hearing.

The question presented to this Board is whether under the circumstances of this case Claimant and his crew reasonably should have seen the burning red fusee. Those employees testified consistently and vigorously at the investigation that they did not see

the fusee. Claimant and the two brakemen who were riding in the cab of the locomotive testified that after they ran over the torpedoes they were alerted to the possibility of an efficiency test, that they opened the rear door of the engine which was facing forward so that they could observe the track better and watched for the fusee. The Conductor who was on the rear of the train at the time it passed the red fusee testified that he could not see it until the Traveling Engineer lifted it from where it was laying and displayed it in his hand.

The Traveling Engineer, on the other hand, maintains that he lit the red fusee when he saw Claimant's train coming and placed it on the ballast of the track between the two rails which ballast was even with the nearest railroad tie. The Traveling Engineer testified further that because he believed the fusee might have been difficult to see he lit a second fusee approximately twenty-five minutes after he had lit the first fusee and placed it on the same spot, walked toward the fusee in the direction the train had traveled and was able to see it, though not clearly, at approximately 200 feet.

However, a test during the investigation revealed that with the long portion of the engine in the lead the vision of the crew operating the engine in that position is blocked for 185 feet in front of the train. Accordingly, even though Claimant and his crew were higher than the Traveling Engineer, they would have had a very short distance within which to see the fusee before the front of the engine blocked it from their view.

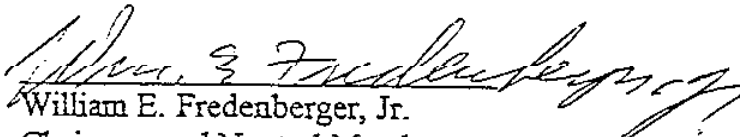
Traveling at ten miles per hour with the last light of day gleaming across the rails, it does not appear to this Board that the crew had a reasonable opportunity to see the lit fusee. It


follows that Claimant cannot be charged realistically with responsibility for his train passing the red fusee.

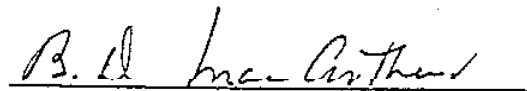
AWARD

Claim sustained.

The Carrier will make this award effective within thirty days of the date hereof.


William E. Fredenberger, Jr.
Chairman and Neutral Member


C. R. Wise
Carrier Member


R. D. MacArthur
Employee Member

DATED:
