

AWARD NO. 121  
NMB CASE NO. 121  
UNION CASE NO. 1127153  
COMPANY CASE NO. 98027

PUBLIC LAW BOARD NO. 4450

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY  
(Western Region)

—and—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

Appealing the Upgrade Level 4 Discipline assessed to Engineer D. W. Dousett and request of expungement of discipline assessed and pay for any and all time lost with all seniority restored unimpaired. Action taken as a result of formal hearing held February 5 and 6, 1998.

OPINION OF BOARD: Engineer D. W. Dousett ("Claimant") was called as engineer and Conductor M. A. Garrish was called as the other member of the crew to operate the CSVLX-25, a loaded coal train, from Las Vegas to Yermo (a run of 171 miles). The train, which had 100 loads with no empties, was 12,885 tons and 5,691 feet long and equipped with Distributed Power Units (DPU); i.e., a second set of locomotives was coupled back in the train but was operated by the locomotive engineer on the lead locomotive. There is no classroom instruction for DPU operations on UPRR, thus all training for locomotive engineers who are not instructors is "on the job" training. Because Claimant had not previously operated a DPU train and had no experience with DPU operations, Engineer D. J. Maurer, a DPU instructor engineer was also called for that trip, to

AWARD NO. 121  
NMB CASE NO. 121  
UNION CASE NO. 1127153  
COMPANY CASE NO. 98027

accompany Claimant and familiarize him with the operation of DPU equipment.

Claimant and crew reported early for duty and after Conductor Garrish secured the needed paperwork for the train, track warrants, track bulletins, Form B, etc., a job briefing was held and they started their road trip. It is not disputed, however, that the on-duty clerk at Las Vegas gave Conductor Garrish an incomplete set of train orders. The track warrant initially issued to the CSVLX-25 was cleared for the proper route (Las Vegas to Yermo), but contained only track bulletins for trains traveling territories east of Las Vegas. That Track Warrant No. 0079, with four (4) attached track bulletins, was issued by the Dispatcher at 0027 on January 28, 1998.

Neither Conductor Garrish nor Claimant Dousett picked up on the fact that they were missing some of the track bulletins listed in the Track Warrant 0079. As a result, they were unaware there was a Form B in effect beginning at milepost 328.50 and were not specifically looking for those yellow/red boards or the red board. Upon boarding the train, Instructor Maurer began immediately instructing Engineer Dousett on DPU operations. The train departed Las Vegas at 5:58 a.m., with conditions dark but not stormy, with ascending grade (from between .45% to 1.00%) as the train proceeded west from Las Vegas. As the train proceeded west, it encountered a stop (red) signal at CP 330 and Conductor Garrish performed an on ground roll by inspection of an east bound CLBSR-25. After the eastbound train had proceeded past, the crew received a clear (green) signal at CP330 and proceeded west.

Engineer Maurer continued to instruct Engineer Dousett on DPU operation while Conductor Garrish watched the rail for any obstructions or other impediments. According to the subsequent testimony of the crew, Conductor Garrish was making a special effort to be observant because

Claimant and Engineer D. J. Maurer were very focused on the Claimant's DPU instruction. As the train proceeded west, it encountered a stop (red) signal at CP 330 and Conductor Garrish performed an on ground roll by inspection of an east bound CLBSR-25. After the eastbound train had proceeded past, the crew received a clear (green) signal at CP330 and proceeded west. [It is noted that the crew which went on duty at Yermo at 2110 on January 27 on the eastbound train met by the CSVLX-25 at CP330 had all the track bulletins necessary to traverse the territory safely. By comparison, Claimant's crew received Track Warrant 0079 with ten (10) track bulletins listed as attached, but they were in fact missing six (6) track warrants, including the Form B 15084 covering the territory between milepost 328.50 and milepost 324. Track bulletin 15084 had been issued the day before and had an OK time of 1534 hours on January 27].

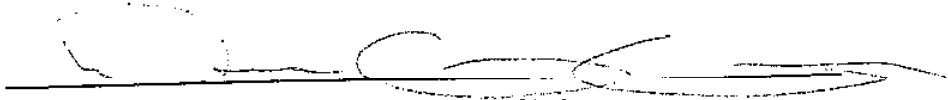
So far as the record shows, signal aspects were observed and called as Claimant's train proceeded west and it is undisputed that the crew called Foreman Ballard and received authority to proceed through the limits of Track Bulletin 14086 (between M.P. 330.25 and M.P. 331.0), even though that bulletin was not in effect until 7:00 a.m. It is not disputed that no one in the cab noticed the yellow/red boards or the red board as they approached CP326.5, between 0605 and 0620, where the missing Form B Track Bulletin had just gone into effect at 6:00 a.m. After the train had passed through the Form B area between M.P. 326.5 and M.P. 326.0, Foreman Powell, who was in charge, called the Dispatcher. The crew was called and instructed to proceed at restricted speed to Arden (CP 321) and get a new track warrant and a full set of the track bulletins. It was not until that time that the crew discovered that the warrant they received when they went on duty was missing six (6) track bulletins, including the one for Foreman Powell, i.e., Track Bulletin #15084 between M.P. 326.0 and M.P. 326.5 in effect beginning at 6:00 a.m.

Based on the foregoing facts, as developed at a properly conducted formal investigation, Carrier exonerated Conductor Garrish but found Claimant culpable of violating General Code of Operating Rules 5.4.2 and 5.4.7, for which a Level 4 (30-day suspension) was imposed. Failure to comply with such critically important safety rules might well have resulted in tragic consequences and Claimant cannot escape all responsibility for the violation. However, this Board is persuaded that a modification of the *quantum* of discipline imposed is warranted by the record evidence. We do so principally because Carrier unreasonably failed to mitigate Claimant's culpability and unreasonably singled out Claimant for the full measure of discipline, while exonerating the Conductor who shared in the crew's failure to notice the missing track bulletins or detect the track-side boards.

Whether the lack of reflectorized boards invalidated the test or the lack of the use of lights prior to sunrise contributed to the violations is in dispute. But it cannot reasonably be argued that Claimant was solely responsible or that the issuance of an incomplete set of track bulletins by the Dispatcher must be factored in to mitigate his share of the culpability. Accordingly, because of the unique circumstances presented in this record, we shall reduce the penalty from Level 4 (30 day suspension) to Level 3 (5-day suspension). Carrier is directed to adjust Claimant's personnel record and to make him whole for the difference in lost pay, provided the latter aspect is possible under controlling FRA and LERB regulations.

AWARD

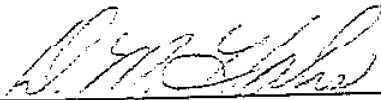
- 1) Claim sustained to the extent indicated in the Opinion.
- 2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.



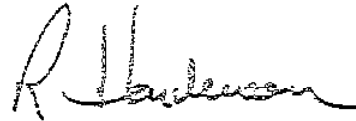
Dana Edward Eischen, Chairman

Dated at Spencer, New York on March 19, 2001

---



Union Member



Company Member