

PUBLIC LAW BOARD NO. 4450

AWARD NO. 92  
NMB CASE NO. 92  
UNION CASE NO. 07173C  
COMPANY CASE NO. 9504080

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY  
(Western Region)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Appealing the UPGRADE Level 3 Discipline of Engineer B. A. Blanchard and request the expungement of discipline assessed and pay for all lost time with all seniority and vacation rights restored unimpaired. Action taken as a result of investigation held February 3, 1995.

OPINION OF BOARD: On the night of January 27, 1995, Claimant was assigned to the Los Angeles Engineer's Extra Board and was on duty performing HG-Relief (dogcatching) service. Claimant and crew were transported to Montclair, California to dogcatch the NPLAV-25 which had been tied down in the siding. The dispatcher informed Claimant's conductor of his intent to run another train around them, prompting the conductor to request a meal period which was approved by the dispatcher. Claimant was back in his consist preparing the locomotives for the eventual trip and did not have access to a radio and did not hear any conversations.

When Claimant was informed by the conductor of the meal period, he elected to remain with the train while the rest of the crew took their lunch break. About 8:15, Claimant noticed the main line signal go green indicating to him they would be overtaken by a train which was then still several miles away. Whether to give a roll-by when the train finally got past or simply to get some fresh air,

Claimant took his flashlight and left the control cab to walk along side the track. As Claimant walked alongside the right-of-way, he apparently stumbled, rolled and slid some six feet down into a deep drainage canal. The canal apparently was empty of runoff water, but because it was slimy and slick at its bottom and side and the fall injured Claimant, he had difficulty climbing up the embankment. Claimant threw his flashlight up over the top and upon his return from the meal period, the conductor noticed the flashlight, found Claimant and then notified proper railroad authority. M/YO Sutherland was called to the scene and tried as best he could to help Claimant out of the predicament. Due to the depth of and the steep angle of the banks of the ditch the fire department was called and Claimant eventually was extricated. As a result of the fall Claimant sustained a sprained ankle.

The investigation recorded various descriptions of the area in and around the Montclair siding at the point where the head end of the NPLAV was situated, but there appeared to be consistent testimony regarding the edge of the runoff drainage ditch being some 12 to 17 feet away from the ballast edge of the main line. The record clearly indicated that Claimant was aware of the ditch as a potential hazard and the preponderance of evidence supports Carrier's conclusion that he failed to comply with specified Safety Rules:

**70.22.1 Avoiding Objects and Slip, Trip, and Falling Hazards**

Employees must avoid objects, obstructions, holes, and openings and be alert to underfoot conditions that might contribute to slipping, tripping, or falling.

**1.1.2 Alert and Attentive**

Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury.

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Notwithstanding Claimant's culpability, Carrier's disciplinary action in this case must be modified. It is not disputed that the Form 3 and Notice of Charge specified that a finding of guilt would involve an assessment of a Level 1 discipline. Nor is it disputed that at the time Claimant had a clean discipline record, reflected in the Form 3 as Level 0. Inexplicably, after Claimant declined to waive investigation and was found guilty, the MTO revised the Form 3 to show a Level 2 and the upgraded the discipline actually assessed to Level 3, as shown in the following Notice of Discipline:

After carefully considering the evidence adduced at the hearing held at Los Angeles, California on February 3, 1995, I find that the following charges against you have been sustained:

For your responsibility in connection with working in an unsafe manner which resulted in personal injury to yourself while you were performing service as Engineer on the NPLAV-25 at Montclair, California, at 20:15 hours January 27, 1995 in violation of Rules 70.22.1 and 1.1.2 as contained in the General Code of Operating Rules effective April 10, 1994.

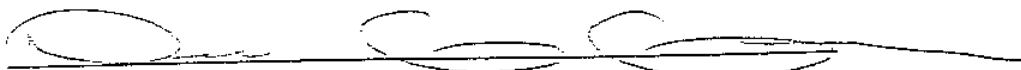
You are therefore being assessed with a Level 3 in the Discipline Upgrade Policy which entails five day suspension without pay which will be added upon your full duty medical release. You will also be required to take a rules examination prior to your return which will also serve as your corrective action plan. (underscoring added)

This punitive and unjustified escalation of the disciplinary action from a Level 1 to a Level 3 must be deemed arbitrary and unreasonable. Accordingly, Carrier must reduce the Level 3 discipline assessed in this matter to a Level 1 and make Claimant whole for the difference.

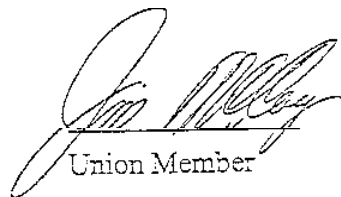
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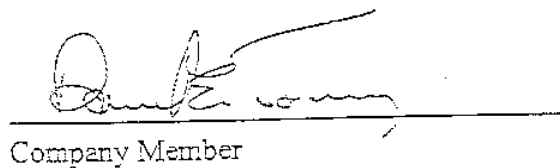
- 1) Claim denied in part and sustained in part, as indicated in the Opinion of the Board.
- 2) Carrier is directed to adjust the UPGRADE disciplinary status of Engineer B. A. Blanchard, effective February 13, 1995, from Level 3 to Level 1.
- 3) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.
- 4) Continued jurisdiction of this Board over any dispute which may arise concerning the interpretation and implementation of this Award may be invoked by written notification to the Chairman from the Organization or the Carrier.



Dana Edward Eischen, Chairman  
Dated at Spencer, New York on May 7, 1999



Union Member



Company Member