

AWARD NO. 97
NMB CASE NO. 97
UNION CASE NO. 07175D
COMPANY CASE NO. 9504081

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 with 30-day suspension of Engineer R. B. Gaylord 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 20, 1995.

OPINION OF BOARD:

Engineer R. B. Gaylord (Claimant) Locomotive Engineer on the CNYR-14, an eastbound train operating between Los Angeles and Yermo, California on February 15, 1995. This eastward train was routed to the Southern Pacific's (SP) Colton terminal, where it would then be diverted onto the Santa Fe (ATSF) at "Santa Fe Interlocking-West Colton". The area in question was at the time used by SP, UP and ATSF and was located at approximately MP 538.6 on the former SP main line at its West Colton, California terminal.

It is not disputed that Claimant stopped his train for absolute signal displaying stop on SP's main line short of the interlocking limits and apparently informed the ATSF dispatcher of his whereabouts. Conductor Mayes then contacted the SP dispatcher who notified the ATSF dispatcher

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that he wanted to send Claimant's train over and then gave Conductor Mayes authorization to proceed. The transcribed tapes of the SP dispatcher conversations with his counterpart at ATSF and with Conductor Mayes read in pertinent as follows:

Voice Tape from SP:

Santa Fe, the AT's got a CNVR UP holler needs to come out to you if you can take him.

Okay, bring him on

Okay, here's his engine, UP 2516, 15 loads, 60 empty, 3520 tons, 4519 feet.

They just called me.

I'm sorry.

I got all his dope, they just gave me a call.

Okay. If it's okay, I'll have to flag him onto your track there, but yeah okay, thanks.

Okay, bring him on.

Thank you.

UP, UP Transfer 2516 WS 48, over.

Go ahead, 48, over.

UP 2516 after stopping at Santa Fe crossover has permission to pass stop indication #2 onto the #1 track clearing onto the connecting track at Santa Fe/Colton

After stopping UP 2516 has authority to pass signal displaying stop indication from #2 main line crossing over to #1 main line onto the - -

Dispatcher, we've got a long ways to hook.

Okay, onto the Santa Fe connection here and proceed on signal indication or the Santa Fe's Dispatcher's authority there to Santa Fe, over.

Roger, proceed on Santa Fe's authority onto their railroad, thank you.

That is correct, thank you."

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After receiving this authorization to proceed, Claimant passed through the red absolute signal at which he was stopped on main line #2 onto and proceeded on main line #1 in expectation of clearing up on the interchange and being diverted onto the ATSF. While moving through the interchange on main line #1 he encountered another red absolute signal but did not stop because he assumed he had been given authority to move straight through the interlocking limits onto the ATSF.

The route was not properly lined for Claimant's movement and the lead unit and one set of trucks of the second unit derailed at the facing point switch just past the crossover, even though the crew would later testify that they had observed all switches properly lined for their movement. Another crew was used to separate the remaining portion of the train away from the derailed locomotives and Claimant and Conductor Mayes were allowed to continue on to Yermo and tied up.

After obtaining rest, the crew was informed they were being withheld from service pending formal investigation and were subsequently given Notice of Investigation dated February 16, 1995, reading in part:

"Report to the Office of the Superintendent, 5500 Ferguson Drive, Suite 'F', Los Angeles, California, on Monday, February 20, 1995 at 2:00 PM for formal investigation and hearing to develop the facts and determine responsibility, if any concerning your alleged responsibility in passing the block signal requiring the train to stop before passing the signal from SP main track #1 to the SP Transfer at Colton, CA at approximately 20:40 hours on February 15, 1995 while assigned as Engineer on the CNYR-14.

Following the hearing, Claimant was found culpable as charged and assessed a UPGRADE Level 4, a 30-day suspension without pay.

A careful review of the evidentiary record leaves this Board persuaded that the discipline must be rescinded. In our considered judgement, primary responsibility for the confusion resulting

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in this unfortunate incident lies with the SP dispatcher rather than with Claimant. The train was already stopped at the absolute signal before the crossover and Claimant reasonably construed the SP dispatcher's instructions as giving him authority to proceed past the next red signal he encountered on the SP transfer and thence onto the Santa Fe. The SP dispatcher instructions were not a model of clarity and it is manifest that Conductor Mayes may have misconstrued what the SP dispatcher intended. That possible misconception was reinforced by the Conductor's repetition of his understanding of the instructions and the SP dispatcher's concurrence, in their last exchange between to the derailment, i.e.,

Dispatcher: *After stopping UP 2516 has authority to pass signal displaying stop indication from #2 main line crossing over to #1 main line onto the...*

Conductor: *Dispatcher, we've got a long ways to hook.*

Dispatcher: *...Santa Fe connection here and proceed on signal indication or the Santa Fe's Dispatcher's authority there to Santa Fe, over.*

Conductor: *Roger, proceed on Santa Fe's authority onto their railroad, thank you*

Dispatcher: *That is correct, thank you.*

Moreover, any error in understanding was compounded by the general ignorance of all concerned as to whether the trackage on which the second red absolute was situated was under the control of the SP dispatcher or the ATSF dispatcher. We find it illuminating that, following this incident, SP dispatchers began to give much more detailed and specific authorization to trains entering from the SP main line track #1 to the SP transfer at West Colton.

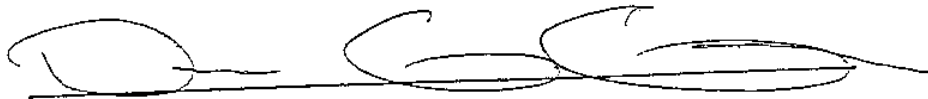
Based on all of the foregoing, we conclude that Claimant reasonably understood that the SP dispatcher had authorized him to pass both absolute signals and move through the interlocking limits

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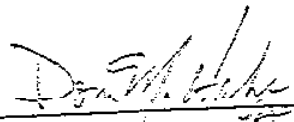

to the ATSF. Carrier erred in faulting him for passing the second red absolute signal holding him responsible for the derailment within the interlocking limits on the SP Transfer on February 15, 1995. Accordingly, the Level 4 UPGRADE discipline must be removed from his record and he must be made whole for resultant monetary loss. In that connection, Carrier must make Claimant whole for the six (6) days held out of service pending investigation as well as the thirty (30) days' suspension without pay.

AWARD

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



David Edward Eisichen, Chairman
Dated at Spencer, New York on February 26, 2000


Union Member
Company Member