

Award No. 456

Case No. 456

PUBLIC LAW BOARD NO. 5383

BROTHERHOOD OF LOCOMOTIVE ENGINEERS)	
)	
vs.)	Parties to Dispute
)	
UNION PACIFIC RAILROAD COMPANY)	

STATEMENT OF CLAIM:

Claim in behalf of Engineer C. L. Marger,
SS# 481-62-6307, Union Pacific Railroad former
Chicago and North Western Transportation
Company for compensation for all lost time
including time spent at the investigation and
that this incident be removed from Claimant's
personal record when he was investigated on
the following charge:

"Your responsibility for collision
at Hull Avenue Yard on November 11,
1979, at about 9:45 P.M."

FINDINGS

Upon the whole record and all the evidence, the Board
finds that the parties herein are Carrier and Employee within
the meaning of the Railway Labor Act, as amended, and that the
Board is duly constituted by agreement and has jurisdiction
of the parties and of the subject matter.

Following a disciplinary investigation, Claimant Engineer was found responsible in connection with a collision at Hull Avenue Yard and he was disciplined with thirty (30) days suspension.

It is not in dispute that Claimant was operating the engine when the incident occurred. The difficulty here is that the transcript of investigation fails to establish what Claimant did or did not do to cause the collision. In the correspondence subsequent to the investigation it is stated that the discipline was based on a failure to comply with Rule 93, but this is not in the transcript and its application is not shown.

In First Division Award 22099 (O'Brien), it was held as follows:

".....before an accused can be properly disciplined Carrier must prove that he has either violated a rule, was negligent in the performance of his duties or has breached a duty owed to him by others."

For reasons stated above the discipline must be set aside.

AWARD

Claim is sustained.

ORDER

The Carrier is ordered to make this Award effective within thirty (30) days from the date shown below.

B. H. Ivan Arthur
Employee Member

W. G. Bonalan
Carrier Member

H. C. Celly
Chairman and Neutral Member

Dated: 2-16-99