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Award No. 521
Case No. 521

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 R. E. Nevens, 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 your failure to properly perform your duties when you operated between Chicago Ridge to Landers on N&W mainline without a clearance at about 23:35 on 1/2/91 while operating as crew members on YYE Extra 80 on duty 2000, 1/2/91."

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

Claimant Engineer was the only member on his crew charged with the violation, which is basis for reversal, according to the Employees, as the conductor is also liable under the rules.

An identical speeding case was decided in Award 12 of Public Law Board No. 2533 (Weston). It was held as follows:

"While an employee generally cannot evade responsibility..... because other employees may also be at fault..... substantial discipline is not appropriate where a marked disparity of treatment..... is clearly established by the record. We are disposed to give the Carrier considerable latitude in assessing discipline for train movements because of its enormous responsibilities for safety. On the basis of the present record, however, we are satisfied that the claim must be sustained and the discipline set aside."

Under the dictum of the decision quoted above, we find similarly.

AWARD

Claim is sustained.

ORDER

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

B. L. MacArthur
Employee Member

R. J. [Signature]
Carrier Member

[Signature]
Chairman and Neutral Member

Dated: 1-5-98