

PUBLIC LAW BOARD NO. 6040

AWARD NO. 10
NMB CASE NO. 10
UNION CASE NO. W. O. Nelson
COMPANY CASE NO. 9503229

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
(Eastern District)

STATEMENT OF CLAIM: Claim of Engineer W. O. Nelson of North Platte, Nebraska for all(o time lost (1 day attending Formal Hearing) and removal of all entries of this discipline (UPGRADE Level 2) from his personal record.

OPINION OF BOARD: Engineer W. O. Nelson ("Claimant") was working as an Engineer on train CCERO-01 in the North Platte, Nebraska yards on September 4, 1995. While backing his locomotive consist from the west end of track 602, in the westbound coal yard, to his train in track 290, using hand signals from his Conductor, S. L. Johnson the Claimant ran through the rigid track 611 switch. Some damage occurred to the rigid switch but there was no damage to rolling stock or injury to personnel. Following an investigative hearing conducted September 19, 1995, Carrier notified the Claimant that his personal record had been assessed with Level 2 under the UPGRADE Progressive Discipline Policy for his alleged culpability in the run through of the 611 rigid track switch. That level of discipline required Claimant Nelson to serve a one day or one round trip alternative assignment with pay to develop a corrective action plan to modify behavior.

In this appeal, Claimant and the Organization maintain that Carrier found him culpable contrary to the record evidence, which demonstrates he was operating with exaggerated slowness and caution in deference to the inexperience of his Conductor and that the proximate cause of the

run through was inadequate communication by the inexperienced Conductor while he was out of sight of Claimant. That conclusion is supported by a careful examination of the testimony by Conductor Johnson, who had only 6 months railroad experience and 3 weeks familiarity with the territory at the time of the incident. That testimony establishes that Conductor Johnson started the movement with hand signals from the lead locomotive in the direction of the movement but went out of sight of the Engineer while rounding a right hand curve just before he saw that the rigid switch 611 was lined against the movement. He abruptly switched to radio when he realized he had gone out of sight around a curve:

Q: And did you actually know that you were out of sight of the engineer?

A: No, sir. No, I didn't.

Q: Prior to fouling or running through switch No. 611, did you make any attempt to stop the movement?

A: Yes, I did.

Q: And how did you do that?

A: By radio.

Q: And the reason you used radio was why?

A: I knew I was out of sight. Once I figured out I was out of sight, I gave him the first easy and he didn't slow down, I figured we was getting broke in.

Q: And then for what reason did you feel you had to get off the units and give a stop sign by hand?

A: I knew I was out of sight by then. We were about a unit length away, and I wasn't getting no response on radio communication. Then I proceeded to get off and give a washout, because I wasn't getting no response on the radio. By then, it was too late.

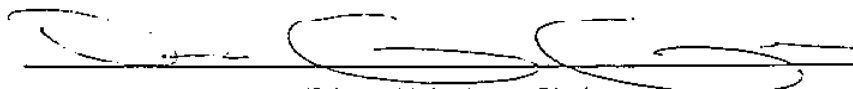
Q: That was my question. Do you feel that you was getting a response by radio when you give an easy or a stop sign?

A: No. I wasn't getting no response.

So far as the record evidence shows, Claimant Nelson stopped his train as soon as possible after receiving the unexpected radio communication to slow and then stop, followed by a wash out hand signal from Conductor Johnson who got off the consist and moved North of the curve back into line of sight. A scatter gun approach of discipline to Engineer Nelson just because he was at the controls during this unfortunate incident cannot be validated on an evidentiary record requiring rifle-like accuracy of disciplinary action only of the culpable employee. In the absence of any evidence that the Engineer had a contributory share of Conductor Johnson's violation of rules in the run through, the claim for reversal of Engineer Nelson's discipline in this case must be sustained.

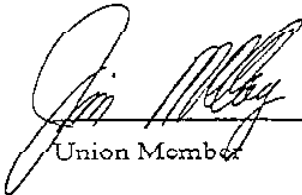
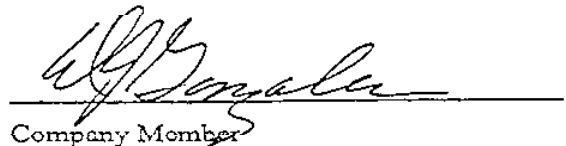
AWARD

- 1) Claim sustained.
- 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 January 15, 1999


Union Member
Company Member