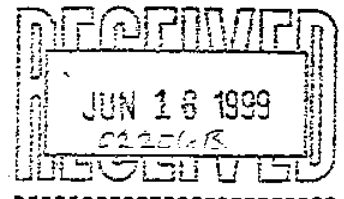


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PUBLIC LAW BOARD NO. 6155

Case No. 21  
Award No. 21  
Carrier File No. 346577  
Organization's File No. 02206B  
Claimant Engineer E. L. Whitney

*CITE 94085 WFD  
Summary of Facts*

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

AND

UNION PACIFIC RAILROAD COMPANY

Statement of Claim:

The Organization appeals the Level 2 Discipline assessed to Engineer T. L. Whitney and requests the discipline assessed be expunged from his personal record and the Claimant be paid for all lost time with all seniority and vacation rights restored unimpaired.

Findings:

The Board, upon consideration of the entire record and all of the evidence finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated May 19, 1989, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

By certified letter dated December 15, 1995, the Claimant was advised to report to the Bridge Conference Room, Union Pacific Depot, Pocatello, Idaho on December 19 1995, for a formal Investigation. The purpose of the hearing was to determine if the Claimant failed to reduce the speed of his train and contact the Dispatcher on December 14, 1995, when the hot box and dragging equipment detector at MP 834.5 indicated an "Integrity Failure". If the Claimant's culpability was confirmed through evidence, the Carrier indicated his actions would be in violation of General Code of Operating Rules, Third Edition, effective April 10, 1994, as well as, Special Instructions, Timetable No., which basically required the crew to reduce the speed of the train to 35 mph and to contact the Dispatcher.

The Investigation was held as scheduled. After reviewing the evidence, the Carrier determined the Claimant at fault and issued a Level 2 Discipline.

According to his testimony, the Manager of Train Operations, Brunskill, was on duty at Green River on the day of the incident December 14, 1995. While at Grange around 9:30 a.m., he heard the hot box dragging equipment detector located at 834.5 announced at least twice. He also heard the trains as they responded. On his return to Green River, he passed the scanner near Alchem and observed Signal Maintainer, Lehman, working on the scanner. He then proceeded to Alchem. He went on to testify that while he was there the detector announced an Integrity Failure as the Claimant's train, HKNPP-13, moved over the detector on Track 2. When he left Alchem, he expected to catch up to the Claimant's train moving at the 35 mph restricted speed. However, he did not find the train until he arrived at G819, the Green River Hold. He then called the Green River Roundhouse Foreman and asked him to download the events recorder from the Engine of train HKNPP-13. He subsequently called the crew to his office to ask why they had not reduced the speed of their train as required by the rules. They indicated that they had not heard the hot box detector announce an Integrity Failure. The Claimant further indicated he was not aware a detector was at that particular location.

In any case, the crew was given a reasonable cause test, which they passed. An Investigation was held and it was determined the crew violated the cited rule and Timetable No. 2.

#### CARRIER'S POSITION

The Carrier argues that the crew failed to respond to the hot box detector. They contend that once the detector indicated an Integrity Failure, the crew had to reduce its speed to 35 mph and contact the Dispatcher. They proffer the tapes from the events recorder of their engine as evidence that the train never reduced its speed appreciably. Furthermore, the Carrier points to other witnesses who clearly heard the detector announce the Integrity Failure. They insist that if the crew did not hear the defect, they did not have their radio set properly.

The Carrier discounts the Organization's contention that the Claimant was not afforded a full and fair hearing or was prejudged in any way. They also assert they did not have to offer the Claimant Union Representation when he filled out Form 1 in the manager's office. The Carrier contends all the Claimant's due process rights were protected and he was given a full and fair hearing. They believe the penalty issued was appropriate under the UPGRADE Policy.

#### ORGANIZATION'S POSITION

The Organization argues there were several procedural errors which should negate the actions of the Carrier. The first they say, deals with the completion of Form 1. They insist the Claimant should have had Union Representation while filling out the form. Secondly, the Claimant was denied a fair hearing because the Carrier assumed his guilt when they filled out Form 2 which assumed the guilt of the Claimant for a violation of the cited rule. In addition, the Organization believes the Hearing Officer did not conduct himself in a manner that would allow the full facts and evidence to come out at the hearing. Instead, they assert, the Hearing Officer

injected his own opinions and views into the record.

As to the merits, the Organization, contends the Carrier has not met its burden of proof in this case. The evidence they presented through their primary witness, MOT Brunskill, was inconsistent and contradictory. For this reason alone, the charges against the Claimant should be removed.

The Organization continues to argue that the crew never received an Integrity Failure from the detector and did not receive a call from the Dispatcher. In addition, they contend that the train would have had a hold if the detector had indicated a defect or an Integrity Failure. Instead they proceeded unrestricted into Peru. Furthermore, the crew of another train did not hear an Integrity Failure which they reportedly received. It wasn't until the Dispatcher notified them he was clearing them to the next location at restricted speed, that they were aware of anything.

They Organization argues that the Claimant should be cleared of all charges and the claim should be sustained.

#### DECISION

The crew of any train has a clear obligation to be alert to the signals of all hot box detectors and then to follow the pertinent rules. In this case, however, the evidence is at best confusing and inconclusive. The Board is not convinced that the detector worked properly on the day in question. Furthermore, it is unclear as to whether the signal was even clearly sent. If it had been, one must wonder why the Dispatcher never challenged the crew at the time of occurrence. The Board finds the evidence insufficient to sustain the charges.

#### AWARD

The claim is sustained.

The Carrier will comply with the Award within thirty (30) days of its receipt.

  
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Carol J. Zamperini, Impartial Neutral

Submitted this 31<sup>st</sup> day of May, 1999