

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6198**

**JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
A. C. HALBERG, CARRIER MEMBER
D. E. THOMPSON, ORGANIZATION MEMBER**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
SLSW, GENERAL COMMITTEE**

and

**UNION PACIFIC RAILROAD COMPANY
(FORMER ST. LOUIS SOUTHWESTERN RY. CO.)**

**Award No. 5
Case No. 5**

*Date of Hearing - March 31, 1999
Date of Award May 24, 1999*

Statement of Claim:

Claim of Engineer C. J. Eifert to expunge discipline from personal file as a result of investigation held on July 29, 1998, and that he be paid for all time lost.

FINDINGS:

Public Law Board No. 6198, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

The herein Claimant, Engineer C. J. Eifert, was operating a train between Pratt, Kansas and Dalhart, Texas on June 27, 1998, when Carrier conducted a light out, dark signal test a MP 491.1. Upon approaching the dark signal, Claimant attempted to stop his train without placing it in emergency braking, but was unable to do so before his engine passed the signal. Claimant was cited to attend an investigation into the incident, and was subsequently issued a 30-Day suspension. That suspension has been appealed to this Board on a variety of procedural and substantive grounds. (Claimant also had his Engineer Certification revoked for 30-days. That revocation was appealed to the Locomotive

Engineer Review Board, which after review of Claimant's petition, overturned Carrier's action on procedural grounds.)

Before this Board, the Organization asserts that the discipline assessed should be negated because Claimant is; 1) an SSW Engineer that is covered by the SSW Agreement and is not subject to UP charge letters, UP Agreements, or UP discipline policies; 2) the Locomotive Engineer Review Board overturned Carrier's decision to revoke Claimant's FRA certification on procedural errors, which are the same errors challenged in this matter; 3) Claimant was charged with a violation that occurred at 2:16 a.m. on June 26, but the record is conclusive that he did not go on duty until 6:50 p.m., that date; 4) the signal test was defective, and the lighting of the signal beyond the dark signal provided false information to Claimant; and 5) efficiency tests should be performed for educational purposes and discipline assessed for failure to pass an efficiency test should be corrective, not unreasonable, harsh, and arbitrary, the situation involved here.

Carrier responds that the efficiency test was conducted correctly and fairly. Further, it denies that sufficient procedural error occurred so as to fatally flaw the investigation. And, even though the Locomotive Engineer Review Board restored Claimant's certification, this should not be considered "controlling" on this Board, as the tests and standards for review are different in each forum.

The Board finds that this matter is replete with substantive evidentiary defect and procedural flaw. First it should note that the Board has difficulty with the manner in which the efficiency test was reported to have been conducted. The testimony seems to be conclusive that only one shunt was used, while tests of this type, to be realistic, would require two shunts. Secondly, the location and indication of the "second" signal, could at night, give the illusion that a clear track was available.

With regard to procedure, it should first be noted that Engineer Eifert was working under the SSW Agreement at the time of the incident and that the requirements of that agreement would control, in all instances where the UP policy would conflict. Notwithstanding that there no longer exists an SSW in tariff provisions the BLE - SSW Labor Agreement survives over the former lines of the SSW, until that Agreement is changed or revised, as provided in the Railway Labor Act. And, if Carrier fails to meet the requirements of the SSW Agreement, with respect to the imposition of discipline, then it must be prepared to accept the conclusion that the discipline will be considered flawed.

The substantive evidentiary defects coupled with several procedural flaws required that the discipline assessed here be rescinded in total. Accordingly, we will direct that all reference to this matter be removed from Claimant's personnel record, and that he be paid for all wage and benefit losses incurred.

The claim has merit. It will be sustained.

A W A R D


Claim sustained, as indicated above.

O R D E R

The Board concludes that an award favorable to Claimant will be made. Carrier is directed to comply with this award, and make any payments that may be required within sixty days of the date indicated below.



John C. Fletcher, Chairman & Neutral Member

 5-31-99

A. C. Halberg, Carrier Member



D. E. Thompson, Organization Member

Dated at Mt. Prospect, Illinois., May 24, 1999