

AWARD NO. 103  
NMB CASE NO. 103  
UNION CASE NO. 07156A  
COMPANY CASE NO. 1008313

PUBLIC LAW BOARD NO. 4450

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY  
(Western Region)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

Appealing the UPGRADE Level 4 Discipline with 30-day suspension of Engineer R. E. Brandon and request the expungement of discipline assessed and pay for all lost time with all seniority and vacation rights restored unimpaired. Action taken as a result of investigation held April 29, 1996.

OPINION OF BOARD:

On April 25, 1996, Robert E. Brandon ("Claimant") was Engineer of train GEONMK-22, a grain train operating from Elko to Salt Lake City, along with Conductor M. J. Talbot. occurred approximately 6:24 PM of April 25, 1996 while Claimant was operating GEONMK-22. Claimant and Conductor M. J. Talbot were called for service originating from the terminal of Milford, Utah and their tour of duty went without incident until after arriving at the final terminal. Claimant stopped his train at Buena Vista for a brief time before receiving a clear (green) indication at CPC 779, following which the train was then moved past CPC 781 (Orange Street) and CPC 781 (10th West), both displaying clear (green) indications. The signal located at CPC 782 (Grants Tower) indicated a yellow over red (approach) but as they approached, the train experienced an undesired

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emergency application of train air brakes and came to a stop on No. 2 main track, approximately ten (10) car lengths from that signal.

The crew was unable to contact the train dispatcher so they advised the Yardmaster at Salt Lake of the situation and made a walking inspection of the train. The Yardmaster dispatched car inspectors to assist with the train and contacted the train dispatcher. The train dispatcher had a superior train following Claimant, so he made the decision to bring the other train around Claimant on the No. 1 main track. In the meantime, Conductor Talbot found the train had separated due to a pulled pin at the fourteenth (14<sup>th</sup>) car and while Mr. Talbot went about recoupling the train the Carmen inspected the rear portion of the train. Completely unaware and uninformed by the train dispatcher or the Yardmaster that the train dispatcher had changed the route and made arrangements for the other train to precede the GEONMK-22, Claimant proceeded into the Salt Lake Yard.

Claimant and his conductor later testified that as they moved again the light at CPC 782 remained yellow over red, that each verified by calling out "high yellow" and that their train was moved on said signal indication. Both crewmen further testified the next signal located at CPC 783 (East Grant Tower), displayed a lunar (restricting) and the train was yarded to the location designated by the yardmaster. In the meantime, the train dispatcher had called the STMET to tell him to cross over around the GEONMK-22, but neither the train dispatcher nor the yardmaster communicated to Claimant that the train dispatcher was going to take down the light and change the previously established route for his train. In order to line the superior train around Claimant's train, the train dispatcher had to line the No. 9 power switch against Claimant's movement, which would have changed the indication of the No. 6 signal (CPC 782) from proceed to stop.

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The train dispatcher was not called as a witness at the formal investigation, but the transcription of tapes from DISP 08 shows that immediately upon throwing power switch No. 9 the train dispatcher left his desk to take a break. When he returned from the break he saw flashing lights on the dispatching computer system, indicating that the No. 6 signal had been over run. Unaware that Claimant's train had preceded the STMET into the yard, the train dispatcher initially was not sure whether the signal had been run through or by what train. However, Manager of Train Operations P. P. Locke was talking on the telephone to the Yardmaster just after the signal was over run and found out about the incident without anyone actually calling to notify him. Mr. Locke arranged through the yard supervisors to have the crew held for him to interview.

Conductor Talbot was in the register room when MTO Locke first informed him of him of a potential problem involving improper passing of the signal back at CPC 782 and Claimant Brandon had just completed yarding his train when he was contacted by Yardmaster Currance regarding the run through signal at CPC 782. Both crewmen were withheld from service pending outcome of a hearing, issued Notice of Investigation (NOI) dated April 26, 1996 and subsequently found guilty by Carrier of passing a red signal at CPC 782. Claimant was notified by UPGRADE Form 3, dated May 5, 1996, that because of responsibility for violating Rule 245Q he was assessed UPGRADE Level 4 Discipline, which requires a thirty (30) day suspension without pay.

In our considered judgement, Carrier failed to carry its burden of proof that Claimant was culpable in any way for this incident. If the train dispatcher had been available at the formal investigation, the record would have been more complete but as it stands the proximate cause the run through of No. 9 switch was the train dispatcher's blatant violation of Rule 9.5.1:

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Rule 9.5.1 Except to avoid an accident, after a controlled signal has been cleared for a closely approaching train, the control operator must not change the signal before the approaching train's engineer has assured the control operator that he can comply with the signal change. Do not establish or authorize a conflicting route until communicating with the approaching train's crew and ensuring that the train has stopped clear of the conflicting route.

The control operator must not establish a conflicting route into an occupied block or interlocking or authorize a conflicting movement, unless it is safe to do so.

The control operator must avoid operating the device controlling a switch, derail, movable point frog, or lock when any portion of a train is on or closely approaching the equipment.

The transcript plus exhibits clearly show the dispatcher violated the above by failing to get Claimant's assurance he could comply with signals once changed, authorizing a conflicting route of another closely approaching train into interlocking limits and operating the device controlling a switch(s) while GEONMK was within interlocking limits. This failure of communication was compounded in the context of the undisputed practice to hold trains at Buena Vista until they can be lined all the way into the yard.

CAD records indicate the route was changed after established and it is also abundantly clear that neither the train dispatcher nor the yardmaster he was conversing with via telephone regarding Claimant's stopped train contacted this crew so as to comply with Rule 9.5. 1. This impropriety was confirmed by company witness Locke in testimony at transcript page 21, as follows:

Q: It's my interpretation of that rule, Mr. Locke, that he shouldn't have lined that unless he could've conferred with them.

A: I agree with you, Mr. Holbrook.


Finally, and most importantly, the record before us more supportive of a scenario in which the train dispatcher operated the power switch and took the light while Claimant was on or closely approaching than it is of Carrier's conclusion that he changed it while Claimant was stopped and then Claimant ran the red signal. Inasmuch as Carrier bears the burden of proving culpability by at

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least a preponderance of the record evidence, we must conclude that carrier failed to carry its burden of proof in this case.

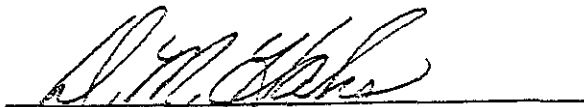
AWARD

- 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 March 16, 2000



Union Member



Company Member

4/26/00