AWARD NO. 105
NMB CASE NO. 105
UNION CASE NO. 08086A
COMPANY CASE NO. 1012536

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 3 Discipline with 5-day suspension of Engineer C. Sotomayor 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 March 22, 1996.

OPINION OF BOARD: Ms. Consuelo Sotomayor, ("Claimant"), was employed as an Engineer at Los Angeles and was working on March 7, 1996, at Yermo, California, with Footboard Yardmaster L. D. Bazzelle and Helper A. D. Hollingsworth. At about 5:50 am Claimant and this yard crew were assigned the task of doubling track 6 to track 18, in order to assemble a train. Using a three locomotive consist, the crew pulled the cars out of track 6 and Mr. Bazzelle told Claimant over the radio to shove ahead thirty (30) car lengths. It is not disputed that Mr. Bazzelle had no idea whether the distance to the coupling on track 18 was 30 car lengths but he made that off-hand estimate of distance and so instructed Claimant on the erroneous assumption that Helper Hollingsworth was riding the lead. In point of fact, while Claimant was shoving down the lead into track 18 at approximately 4 mph, Helper Hollingsworth Helper Hollingsworth boarded the trailing unit that Claimant was operating from. Just before Mr. Hollingsworth got to the door there was an

unexpected impact with the standing cars. Simultaneously with this "rough coupling", Mr. Bazzelle said over the radio"That will do".

As a result of the impact.Helper Hollingsworth sustained injuries to both knees and Claimant and crew were cited by Carrier for investigation. Following the formal investigation, Carrier found Claimant culpable and assessed discipline as follows:

> After carefully considering the evidence adduced at the hearing held in Yermo, California on Friday, March 22, 1996, I find that the following charges against you have been sustained:
>
> While assigned as Engineer, you failed to be alert and attentive and exercise proper handling of your train on the East End of Yermo Yard, Yermo, California, at approximately 4:50 AM on Thursday, March 7, 1996 which caused a rough coupling resulting in a personal injury to a member of your crew while working the ATRA-06 on duty at 2230 hours on March 6, 1996 at Yermo Yard, Yermo, California, in violation of the General Code of Operating Rules, effective April 10, 1994, Rule 2.13.
>
> Under the UPGRADE Discipline Table the current violation requires an assessment of LEVEL 3. The assessment requires you to serve a five (5) day suspension without pay. Your suspension will begin 12:01 am March 30, 1996 and end 12:01 am April 4, 1996.

The rule which Carrier found Claimant guilty of violating reads as follows (Emphasis in original):

> **2.13 In Place of Hand Signals**
>
> When the radio is used instead of hand signals, information must include the direction and distance to be traveled.
> **Movement must stop within half of the distance specified unless additional instructions are received.**

Careful examination of the record evidence shows that this disciplinary action must be reversed because Carrier failed to make out a *prima facie* case that Claimant in fact violated Rule 2.13, *supra*. In order to carry its burden of proof in this matter, Carrier had to show by a preponderance of the record evidence that Claimant did not stop within one-half the distance specified by Footboard Yardmaster Bazzelle, *i.e.*, under Rule 2.13 she was required to stop after shoving no more than 15 car lengths, since Mr. Bazzelle had neither counted down the distance nor

given any additional instructions after radioing Claimant to "30 Car lengths". Not only did Carrier fail to make out a prima facie case that Claimant had shoved 15 or more car lengths prior to the impact but, to the contrary, the record evidence establishes that the point of impact occurred after no more than 10 ½ or 11 car lengths. Based on this critical fact, Carrier's disciplinary action is reversed because the record establishes that Claimant did not violate Rule 2.13.

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

4/24/00