AWARD NO. 116
NMB CASE NO. 116
UNION CASE NO. 1068440
COMPANY CASE NO. 97043

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 assessed to Engineer J. B. McKeon (SSN 548-66-2508) and request expungement of discipline assessed and pay for any and all time lost with all seniority and vacation rights restored unimpaired. Action taken as a result of formal hearing held June 11, 1997.

OPINION OF BOARD:

On June 4, 1997, Engineer J. B. McKeon, ("Claimant"), was called on duty at Las Vegas, Nevada, at 11:45 AM. He purposely traded out to work PBSCB-03, at the behest of MOP L. R. Rhoades who was directly responsible for supervising movement of that inspection special Las Vegas, Nevada to Milford, Utah. MOP Rhoades also used the opportunity to conduct engineer evaluation of Claimant and Conductor C. L. Hardy-- a promoted engineer working in a different craft at the time. Claimant operated PBSCB-03 from Las Vegas to the siding at Rox, where Conductor Hardy took control for an evaluation of his engineer skills by MOP Rhoades, who was seated in the center seat of UP 6173 crew comfort cab.

Less than 30 miles east of accepting control of the train, the Conductor apparently allowed the train to exceed maximum authorized speed through two curves somewhere between MP 425.4 and 428.2. The MOP eventually brought this to the attention of Manager of Train Operations Douglas P. Maughn, who took Claimant out of service and issued the following "dual purpose" Notice of Investigation/Proposed Discipline letter, on June 9, 1997:

> "PLEASE REPORT TO THE CONFERENCE ROOM OF THE MANAGER OF TRAIN OPERATIONS LOCATED AT 435 SOUTH 100 EAST, MILFORD, UTAH. 84751 AT 0900 ON WEDNESDAY JUNE 11, 1997 FOR INVESTIGATION AND HEARING TO DEVELOPE [sic] THE FACTS AND PLACE INDIVIDUAL RESPONSIBILITY, IF ANY IN CONNECTION WITH FOLLOWING CHARGE
>
> THAT DURING YOUR TOUR OF DUTY AS THE ENGINEER OF THE PBSCB-03 ON DUTY LAS VEGAS, NEVADA AT 1115 A.M. WORKING BETWEEN LAS VEGAS, NEVADA AND MILFORD, UTAH THAT YOU DID ALLEGEDLY ALLOW YOUR TRAIN TO TRAVEL AT SPEEDS EXCEEDING 10 MPH OVER THE MAXIMUM AUTHORIZED SPEEDS IN EFFECT FOR YOUR TRAIN AS PUBLISHED IN THE UNION PACIFIC RAILROAD COMPANY SYSTEM TIMETABLE NO 2. EFFECTIVE OCTOBER 29, 1995, IN VIOLATION OF RULE 6.31 OF THE GENERAL CODE OF OPERATING RULES, EFFECTIVE APRIL 10, 1994, AND COULD ALSO INCLUDE VIOLATION OF OTHER RULES, REGULATIONS AND INSTRUCTIONS OF THE UNION PACIFIC RAILROAD COMPANY.
>
> THE INVESTIGATION AND HEARING WILL BE CONDUCTED IN CONFORMITY WITH ALL SCHEDULED RULES AND REGULATIONS BETWEEN THE COMPANY AND BROTHERHOOD OF LOCOMOTIVE ENGINEERS. YOU ARE ENTITLED TO REPRESENTATION AS PROVIDED FOR IN THE SCHEDULED RULES. YOU ALSO MAY PRODUCE SUCH WITNESSES AS YOU DESIRE AT YOUR OWN EXPENSE.
>
> UNDER THE UPGRADE DISCIPLINE POLICY, THE PROPOSED DISCIPLINE IS LEVEL 4. YOU MAY CONTACT MR. D.P. MAUGHAN, MANAGER OF TRAIN OPERATIONS, FOR PRE-INVESTIGATION MEETING AS PER AGREEMENT. AT (801) 397-2291.
>
> YOU ARE BEING WITHHELD FROM SERVICE PENDING RESULTS OF SUCH INVESTIGATION AND HEARING. PLEASE BE ADVISED THAT THIS INVESTIGATION WILL ALSO SATISFY THE PROCEDURAL REQUIREMENTS AS SPECIFIED BY 49 CFR PART 240, QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS DEPENDING ON THE RESULTS OF THIS INVESTIGATION, YOUR QUALIFICATION REQUIREMENTS FOR THE POSITION OF LOCOMOTIVE ENGINEER MAY BE AFFECTED.
>
> */s/ Douglas P. Maughan*
> DOUGLAS P. MAUGHAN

By letter dated June 20, 1997, Superintendent T. R. Lewis found Claimant guilty as charged an imposed the Level 4 discipline. That disciplinary action is rendered null and void and reversed due to a blatant and fatal violation of the UPGRADE policy requirements by Carrier Manager Maughn. Mr Maughn and issued the charges against Claimant and proposed the Level 4 discipline. Despite the objections of the Organization, Mr. Maughn also served as the Hearing Officer who conducted the formal investigation which resulted in Carrier's finding of Claimant's culpability of the charge filed against him by Mr. Maughn and the imposition of the Level 4 Upgrade discipline which had been proposed by Mr. Maughn. Such mixing of roles in a single Carrier manager is expressly and unequivocally prohibited by the terms of the Upgrade Policy Guidelines, which states: "The charging Manager shall ***not*** be the hearing Manager in any case".(Emphasis in original). It is noted that no FRA revocation occurred in this case, accordingly not only is the Level 4 Upgrade discipline expunged from Claimant's record but Carrier shall also make Claimant whole for the thirty (30) days' of lost pay caused by this invalid disciplinary action.

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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 17, 2001

Union Member

Company Member