

PUBLIC LAW BOARD NO. 4450

AWARD NO. 4
NMB CASE NO. 4
UNION CASE NO. PR-BAILEY, C.J.-90
COMPANY CASE NO. 9001967

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY (WESTERN REGION)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

Request the expungment of 30 days actual suspension of
Engineer C. J. Bailey and pay for all lost time.

OPINION OF BOARD:

Engineer C. J. Bailey (Claimant) was disciplined with a 30 day suspension following investigation into a charge that on August 2, 1990 he failed to stop his train short of a red signal and passed that stop signal, allegedly without obtaining permission. The facts of the case are for the most part undisputed.

The incident in question occurred at approximately 11:27 a.m., August 2, 1990. Engineer Bailey and crew were operating their regular assignment, the LUC51-02, a road switcher which services customers between Salt Lake City and Provo, Utah. At mile post 752.8 Engineer Bailey observed a CTC signal displaying a stop indication (signal color was red). Engineer Bailey stopped his train at the signal, picked up the microphone to his radio and asked the rear end, "Do we have authority?" After the rear brakeman asked the conductor, who said "yes", he responded by radio to Engineer Bailey indicating they had permission to proceed through the signal. Upon receiving this information, Engineer Bailey operated his train through the red signal.

It was developed during the conductor's testimony in the investigation, that he said "yes" to the rear brakeman without actually obtaining permission from the train dispatcher to proceed through the signal. Both the Conductor and Engineer Bailey were found in violation of General Code of Operating Rules A, B, 106, 245(Q) and 312(1).

For his responsibility in the incident, the Conductor was

dismissed from service with the Carrier effective August 2, 1990, but was reinstated on a leniency basis on January 20, 1991, with one of many requirements being that he must attend five (5) days of extensive training on the General Code of Operating Rules (ADEPT Training).

Claimant Bailey was found guilty of "not receiving proper permission" to pass the red signal and given a choice between a 30-day suspension or two (2) days of classroom instructions, on the General Code of Operating Rules, with emphasis on the rules allegedly violated. He elected against admitting culpability and taking the classroom instruction. Accordingly, by the provisions of the Collective Bargaining Agreement, he was afforded an investigation with representation and the right to offer his defense on the charges. Following the investigation, at which the above evidence was adduced, Carrier assessed Claimant a 30-day actual suspension.

We have reviewed carefully this record and conclude that the Claim must be sustained. First, the notice of charged alleged that Claimant failed to stop his train before passing the red signal; but the evidence establishes beyond cavil that he did stop and radio for permission, which he received, before proceeding past the signal. Second, Claimant had no way of knowing that the conductor upon whose information he relied had in fact overlooked calling the dispatcher. In the circumstances,

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Claimant cannot be found at fault for not double-checking the information he received by the conductor. He was entitled to rely upon the misrepresentation of his conductor and, in the circumstances presented, Carrier erred in finding that Claimant shared in any way the Conductor's blame for this incident.

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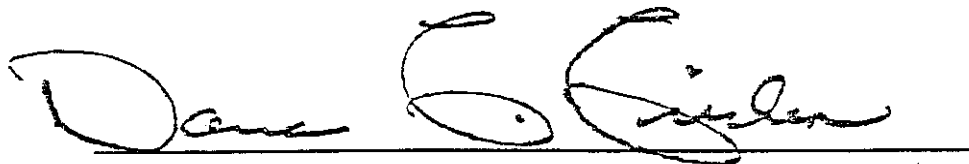
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AWARD

1. Claim sustained.
2. Carrier shall implement this decision within 30 days of its execution by a majority of the Board.



Dana Edward Eischen, Chairman
Dated at Ithaca, New York on DEC 01 1991



Union Member

Dated at Dec 27 1991
on _____



Company Member

Dated at 1-21-92 CHANDLER
on _____