

PUBLIC LAW BOARD NO. 4450

AWARD NO. 88
NMB CASE NO. 88
UNION CASE NO. 97083
COMPANY CASE NO. 1097346

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY
(Western Region)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Appealing the UPGRADE Level 4 Discipline 9 upgraded to Level permanent dismissal) of Engineer J. M. Hylinger 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 December 9, 1997.

OPINION OF BOARD: Engineer J. M. Hylinger, "Claimant"), was assessed UPGRADE Level 4 discipline, upgraded to Level 5 permanent dismissal, by letter of December 19, 1997, reading in pertinent part as follows:

"After having carefully considered evidence presented at the investigation conducted in Seattle, Washington, on December 9, 1997, I find the following charges have been sustained: While you were employed as Engineer on the MSEHKB-04 at approximately 2:45 p.m., PT, on December 5, 1997, near MP 60.5 between Chehasis Jct. and Napavine, on the Seattle Subdivision No. 441, you failed to have track bulletin Form 'B' No. 6698 in your possession as required by Track Warrant No. 1930 dated December 5, 1997, addressed to UP 9144 South. Your actions were in violation of Rules 15.1, 1.1.2, 1.47, and 15.10 of Union Pacific Rules, effective April 10, 1994. This is a Level 4 violation. Your previous Upgrade Level 4, plus the present assessment of Level 4, results in Level 5 status. Upgrade Level 5 discipline is as follows: 'Permanent dismissal.'

The hearing record establishes that on December 5, 1997, Claimant was the Engineer assigned to operate train MSEHB-04, with Conductor J. E. Thomas. After assuming duty at Seattle, Conductor Thomas made the computer entries to get the associated Track Bulletins addressed to UP 9144 South, sent to him by FAX. Track Warrant No. 1930 required the crew of MSEHB-04 to have

in their possession Track Bulletin Form "B" No. 6698, covering an area on BN trackage occupied by a Maintenance Department gang. Upon receipt of the faxed documents, Conductor Thomas photocopied them and gave one set of the paperwork to Claimant. Conductor Thomas and Claimant discussed their trip, but did not jointly review the track bulletins and did not ascertain that they were missing Track Bulletin Form "B" No. 6698.

Some time following departure, as Claimant and Conductor Thomas approached Mile Post 60.5 [they were by then on Burlington Northern Railroad trackage], they encountered a yellow-red flag and a red flag. At this time, they finally determined they did not have a Form "B" Track Warrant to cover the area ahead and called the Foreman-in-Charge of the work. From him, they ascertained the limits of the Form "B" Track Warrant No. 6698 and received permission to proceed through the restricted territory. The Train Dispatcher instructed the crew to set out 18 cars at Long View Junction which was beyond the restricted limits. Claimant and Conductor Thomas contacted Longview Junction requesting a set-out track. Longview Junction responded that Claimant and Conductor Thomas should come to the office to talk to a BN Trainmaster. After they told the BN Trainmaster about the missing track warrant, Claimant and Conductor Thomas were instructed to wait for the arrival of Union Pacific Manager of Train Operations R. G. Spjut. Thereafter, the UPGRADE discipline process under review in this case was initiated.

The undisputed hearing record, including admissions by Claimant, support Carrier's conclusion that he was in violation of Rule 15.1 and 15.10:

Rule 15.1 Track Bulletins

Track bulletins must not be changed unless specified by Rules 15.1.1 (Changing Address of Track Warrants or track Bulletins) and 15.13 (Voiding Track Bulletins). The train dispatcher will issue track bulletins as required. Track bulletins will contain information on all conditions that affect safe train or engine movement. Forms other than track bulletin Forms A and B may be used when necessary

Receipt and Comparison of Track Bulletins

The conductor and engineer must receive a track warrant at their initial station unless otherwise instructed by the train dispatcher. All track bulletins that affected their train's movement must be listed on the track warrant, unless the track warrant shows "NONE" or "NO." The conductor and engineer must have copies of all track bulletins listed, and each member must read and understand.

At the initial station, when outbound crew members, the conductor and engineer must compare the track warrants and track bulletins with each other and with the train dispatcher before proceeding.

Rule 15.10 Retaining Track Bulletins

Employees must keep and comply with track bulletins on all trips during the tour of duty when track bulletins were received.

When directed by the train dispatcher, track bulletins may be retained for use during the next tour of duty. Before initiating movement on the main track on the next tour of duty, a crew member must verify from the train dispatcher that no additional track bulletins are needed.

It is established beyond cavil that upon departure from Seattle, Conductor Thomas and Claimant failed to have possession of Form "B" Track Bulletin No. 6698, as specified in Track Warrant No. 1930. There are only two possible explanations regarding how this crew departed without the requisite Form B No. 6698, but all establish Claimant's culpability for violating the cited Rules: 1) It was not sent and/or received at the fax machine at Seattle; or, 2) It was sent and received but the Conductor misplaced it before photocopying the other documents. Either way, Claimant obviously did not discuss and compare the contents of Track Warrant No. 1930 with Conductor Thomas to assure they had all the required documents and they both had a clear understanding of what they would be required to do during the trip. This clearly indicates neither employee reviewed the contents of Track Warrant No. 1930 or discovered that they lacked the Form B until after they

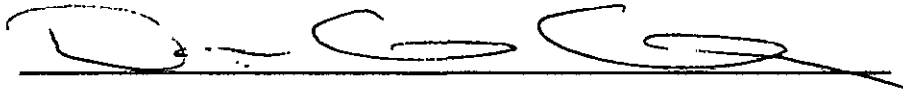
discovered the yellow-red and red flags.

Fortunately for all concerned, this incident did not lead to injury and/or property damage. On a different day with different circumstances, such a serious lapse in responsibility, by both members of the crew, could have resulted in disaster. The absolute necessity to have possession of all track bulletins cannot be overstated. The Board notes that a failure in responsibility in this critical safety aspect of train operations is assigned a Level 4 discipline status under the UPGRADE program, the same level as would be assigned to a stop signal violation or a collision. An isolated or "stand alone" incident of assessed Level 4 Discipline would have required Claimant to serve a thirty (30) day suspension and completed the required rules examination before being then returned to service. In this case, however, Claimant was already at Level 4 status on December 19, 1997 due to a disputed Level 2 UPGRADE imposed December 26, 1996 which resulted in extension of the 36-month retention periods from an October 1994 Level 4 disciplinary action. Thus, when Claimant committed the Level 4 infraction involved in this case, his Level 4 discipline he was upgraded to Level 5 - Permanent Dismissal, in accordance with the provisions of UPGRADE Discipline Policy.

Because the Level 2 discipline imposed on December 26, 1996 was rescinded by this Board for reasons set forth in Award No. 87, however, Carrier erred by upgrading the instant Level 4 to a Level 5. With the invalidation of the Level 2 assessed on December 26, 1996, the retention period on Claimant's October 1994 Level 4 ran out in October 1997 and his UPGRADE discipline status reverted to Level 0 at that time. Thus, his proven culpability in the present case for the Track Warrant/Form B violation on December 5, 1997, should have resulted in the assessment of a "stand alone" Level 4, (30 day suspension), rather than Level 5 permanent dismissal.

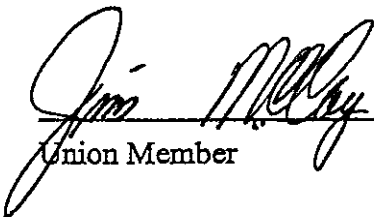
AWARD

- 1) Claim denied in part and sustained in part, as indicated in the Opinion of the Board..
- 2) Carrier is directed to adjust the UPGRADE disciplinary action of Engineer J. M. Hylinger, effective December 19, 1997, from Level 5 (Permanent Dismissal) to Level 4 (30 day suspension without pay).
- 3) Accordingly, Carrier shall reimburse Claimant for "time lost" from January 5, 1998 to June 11, 1999, calculated in accordance with section 17 of the System Agreement-Discipline Rule.
- 4) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.
- 5) Continued jurisdiction of this Board over any dispute which may arise concerning the interpretation and implementation of this Award may be invoked by written notification to the Chairman from the Organization or the Carrier.

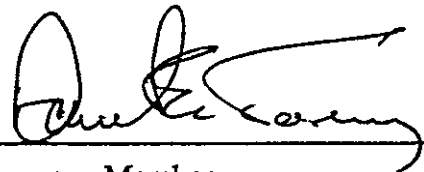


Dana Edward Eischen, Chairman

Dated at Spencer, New York on June 25, 1999



Union Member



Company Member