

PUBLIC LAW BOARD NO. 4656

In the Matter of:)	National Mediation Board
)	Administrator
)	
UNITED TRANSPORTATION UNION)	
(C&T))	
)	
Organization,)	
)	
and)	
)	
UNION PACIFIC RAILROAD)	
COMPANY (MISSOURI PACIFIC)	Case No. 10
UPPER LINES),)	Award No. 9
)	
Carrier.)	

ORGANIZATION'S STATEMENT OF THE CLAIM

Claim for David E. Carrow and John W. Allen for reinstatement to service, with seniority and all other rights unimpaired, and all notations removed from their personal records, with pay for all time lost commencing August 26, 1988, and each calendar day thereafter until restored to service account of being improperly dismissed. Claim includes payment for all wage equivalents to which entitled, including monetary equivalent of lost productivity shares, with all medical, surgical, life and dental benefits, and for any monetary loss for such coverage while dismissed from service.

Organization's File No. DF-1823-735
Carrier File No. 8803931

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the parties and the subject matter of the dispute herein; that this Board is duly constituted by an Agreement dated January 15, 1989; and that all parties were given due notice of the hearing held on this matter.

On August 25, 1988, Claimants, a Conductor and a Brakeman, were assigned to Local Freight LMI 55-25. Claimants, along with the engineer, were situated in the cab of the lead engine. At

3:25 p.m., Claimants' train ran into the rear of Train ASKC-25 at Boyd derailing four cars on the latter train. Fortunately, only Claimant Allen incurred a minor injury.

The Carrier convened an investigation on September 2 and September 8, 1988, to determine if Claimants were partially or fully responsible for the accident. Following the investigation, the Carrier suspended Claimants indefinitely for allegedly passing a dark signal in violation of various operating rules requiring Claimants to interpret a dark signal as the most restrictive indication. The Carrier reinstated Claimants to service on or about December 3, 1988 without prejudice to their right to progress the instant claim to this Board.

The following evidence was developed over the course of the two-day investigation and incorporated into the voluminous record herein.

While Claimants performed some industrial switching near Maplewood, the ASKC passed Claimants' train going west. After completing their shoving, Claimants proceeded westward following the ASKC through a series of approach signals. During this time, Claimants were running west on the south track because the north track at Kirkwood was temporarily out of service. At Park, the signal displayed a diversion approach and Claimants' train crossed back over to the north track. The ASKC had also been diverted to the north track at Park. During this time, Claimants did not communicate with the ASKC crew.

Signal 20.5R is the first signal past Park. The ASKC crew observed an approach signal at 20.5R. At Boyd, the following

signal, the ASKC halted movement at 3:20 p.m. due to a stop indication. As signal 20.5R came into the view of the crew of the LM 55-25, the engineer called the signal clear. Immediately thereafter, both Claimants echoed the clear signal. Everyone in the cab was positive the signal was clear. Nobody expressed any doubt.

The pulse tapes removed from Claimants' train revealed that, after passing signal 20.5R, the engineer increased the train's speed to 39 miles per hour, one mile below the maximum speed limit. As Claimants rounded the curve at milepost 21.75, they saw the ASKC ahead. At first, they thought the ASKC was on the other track but they suddenly realized the ASKC was on the north track. The engineer put their train into emergency. Claimants and the engineer jumped from the engine before the impact. After the collision, Claimants swiftly and prudently protected traffic from the rear and any traffic on the adjacent track which was fouled by derailed cars.

The Manager of Terminal Operations testified that when he went by the signal about an hour after the accident, it appeared dark but after sunset, the signal was red. Claimants conceded that when they went by the signal on the way to the hospital, it was dark. At 7:30 p.m. the Manager of Signal Maintenance observed that the signal displayed a dim red and so he replaced the bulb. The signal was thereafter a strong, vibrant red. Over the next thirty-six hours, the Signal Maintenance Manager, a Signal Engineer and a Signal Maintainer conducted extensive tests on the signal system. They did not detect any defect in the

system or, more specifically, the 20.5R signal. The Signal Maintenance Engineer testified that if the signal had displayed a false clear, there would have been some evidence of the defect. However, the Signal Maintenance Manager admitted it was possible (though unlikely) for the signal to display a clear indication while a train was in the next block.

The Organization submitted some testimony that signal 20.5R showed a false indication several times during the past twenty years. The Carrier explained that these prior incidents were attributable to vandalism or route changes safely initiated by train dispatchers.

The critical factual issue is whether Claimants passed a dark or clear signal at Boyd.

We find that the Carrier, which shoulders the burden of proof, did not present substantial evidence that Claimants committed the charged offense.

All three crew members on the LMI 55-25 were absolutely certain that signal 20.5R showed a clear indication. The engineer obviously acted on the consensus because he raised the throttle. It is implausible, if not incredible, that the engineer would increase the train's speed if the signal was dark. Certainly, Claimants, the other two crew members, would not sit idly by as the train's speed increased if they had passed a dark or stop indication. Also, the clear indication could not be deemed an unusual or unexpected signal. They had passed a series of consecutive approach signals and they believed that the ASKC, a faster train, may have sped far ahead into the next block

(beyond Boyd). Alternatively, the ASKC may have been moving on the south track. Indeed, when they first saw the ASKC ahead of them, Claimants thought it was on the other track. Put differently, a clear indication at 20.5R would not alert Claimants to an abnormal or an unusual situation.

It is true that the Organization did not present convincing evidence that signal 20.5R malfunctioned. However, the Carrier bears the burden of proving that Claimants ran through a dark signal. The mere fact that subsequent testing showed that the signal was operating properly does not constitute irrefutable proof that the system was accurately operating at the time Claimants' train passed the signal especially since other evidence demonstrates that the crew sincerely reacted as if the signal was clear. Public Law Board No. 2050, Award No. 46 (Sickles). Moreover, the pulse tapes dispel any theory that Claimants conspired to concoct their defense. Infrequent and unexplained signal failure (one not verified by subsequent testing) may be exceedingly rare but the devices are not foolproof. NRAB First Division Award No. 10201 (Burque). Furthermore, the inopportune lightbulb replacement, while a seemingly innocuous task, could have rendered it impossible for the subsequent tests to detect or explain any false display.

Claimants are exonerated of any responsibility for the August 25, 1988 collision.

AWARD AND ORDER

Claim sustained. The Carrier shall pay Claimants back wages and expunge the disciplinary notation from their records in accord with Item 6 of the February 22, 1979 Discipline Agreement. The Carrier shall comply with this Award within thirty days of the date stated below.

Dated: February 12, 1991

M. B. Futhey Jr.

M. B. Futhey Jr.
Employees' Member

M. A. Hartman

M. A. Hartman
Carrier's Member

John B. LaRocco

John B. LaRocco
Neutral Member