

IN THE MATTER OF THE ARBITRATION BETWEEN:

AND

Reprimand of Engineer A. G. Prado.

Claim of Engineer A. G. Prado, for the removal of a Level 1 (Letter of Reprimand) of the UPGRADE Progressive Discipline Policy from his personal file and that the Claimant be compensated for any and all lost time attending investigation(s) or being held out of service.

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated May 6, 1991, and has jurisdiction over the parties and the subject matter.

The Union urges that we not consider this a simple contest of credibility between two competing witnesses, because there was other evidence available, but the Carrier failed to provide the event recorder

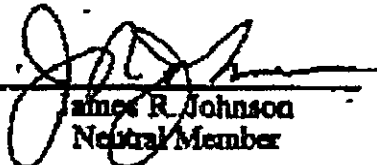
which could have established whether or not the lights were on and displayed, and neither did it furnish evidence concerning the proximity of other trains at the time, which could have resolved the conflict about whether the lights were appropriately dimmed as alleged by the Grievant.

This Board and others have held that the Hearing Officer is in the best position to resolve questions of credibility among witnesses, and, generally, we are reluctant to disturb that judgment. However, that does not apply when Hearing Officers rush to exercise that prerogative, instead of attempting first to resolve the conflict by developing all the relevant evidence available. In this case, the event recorder and documentation of other train movements in the area might have produced a different result. Without that evidence, however, the Hearing Officer and we will never know.

The Carrier did not meet its burden of proof. We will sustain the claim.

III. AWARD

Claim sustained.


James R. Johnson
Neutral Member


C. R. Wiso
Carrier Member


David R. Haack
Employee Member

Dated: 1/19/98