

PUBLIC LAW BOARD NO. 5383

BROTHERHOOD OF LOCOMOTIVE ENGINEERS       )  
  )  
  ) vs.       Parties to Dispute  
  )  
UNION PACIFIC RAILROAD COMPANY            )

STATEMENT OF CLAIM:

Claim in behalf of Engineer O. L. Ramsey, Union Pacific Railroad former Chicago and North Western Transportation Company for compensation for all time lost including time spent at the investigation and that this incident be removed from Claimant's personal record when he was investigated on the following charge:

"Your responsibility for your failure to properly perform your duties when you failed to take appropriate action when a lighted red fusee was displayed next to your train at MP 20.9 on the Geneva Subdivision at approximately 7:47 PM on January 28, 1985 while you were employed as crew members on the Extra 6877 East (GCPRA)."

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

Claimant was assessed ten (10) days suspension for failing an efficiency test. This suspension activated thirty (30) and ten (10) days deferred suspensions from previous disciplinary incidents, resulting in a total of fifty (50) days being served. The claim seeks payment for the entire suspension period.

The operative facts are that the head end and several cars of Claimant's train passed a point where two (2) supervisors were waiting, after which one (1) of them lit a fusee to see if the head end crew was observant of the cars behind as the train when through curved track. The head end did not acknowledge the fusee which was the basis for the disciplinary action against the crew.

The Board has carefully studied the record in this case and we conclude that the claim should be sustained because there was insufficient time between the initial visibility of the lighted fusee and the point where it could no longer be seen by the Engineer looking in a reverse direction. Taking into account the speed of the train (@ 50 mph) there was only a small window of opportunity. Had the fusee been lit sooner than it was, a different result might have obtained.

AWARD

Claim is sustained.

ORDER

The Carrier is ordered to make this Award effective within thirty (30) days from the date shown below.

B. D. Isaac Arthur  
Employee Member

W. G. Boyce  
Carrier Member

R. D. [Signature]  
Chairman and Neutral Member

Dated: 1-5-98