

Award No. 552

Case No. 552

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 P. H. McGee, Union Pacific Railroad former Chicago and North Western Transportation Company, for compensation for all lost time 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 failure to comply with Train Order Number 14 when your train failed to take siding at South Pekin at approximately 7:25 AM and also failure to comply with Rule 99 at MP 11.9 on the St. Louis Subdivision when your train made a reverse movement outside of yard limits without proper protection on April 1, 1985 while employed as crew members on Train No. 1."

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 Engineer was found responsible for failure to comply with a train order and with making a reverse movement in violation of rule 99. He was disciplined with sixty (60) days suspension.

It is not in dispute that Claimant and crew did violate a train order, which is a very serious matter. The record reflects, however, that the reverse movement was subsequently found to be not a rule violation. Thus, the question for this Board to resolve is whether Claimant was suspended for two (2) violations or only one (1).

The Carrier has stated that no part of the discipline was for backing out of the yard. The Employees have stated the discipline should be reduced because Claimant was initially found guilty of both charges.

The Board cannot speculate as to any mental evaluation the principals may have made. We must be controlled by the

written record and determine intent accordingly. We find that Claimant was advised, in writing, that after investigation of the charges (both of them), he was discipline with sixty (60) days actual suspension. It was not until a grievance had been submitted that the Carrier stated Claimant was disciplined solely on the basis of the train order violation. We find that this assertion comes too late.

Under the circumstances, the discipline here shall be reduced to thirty (30) days.

AWARD

Claim is sustained, in part, as indicated above.

ORDER

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

B. H. MacArthur
Employee Member

Alfonso Gonzalez
Carrier Member

B. Kelly
Chairman and Neutral Member

Dated: 3-20-58