

PUBLIC LAW BOARD NO. 5604

Case No. 22

Award No. 22

Parties To Dispute: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-AND-

UNION PACIFIC RAILROAD COMPANY

Statement of Claim:

Claim of 15th District (Marysville) Engineer G.B. Lett for removal of UPGRADE Level 3 discipline from his personal record and pay for all time lost.

Findings:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

The Claimant was assigned to the 15th District Engineers' extra board at Council Bluffs, Iowa. On December 28, 1994, the Claimant was working as the Engineer on Train GSLNGV-27 operating between Council Bluffs and Marysville, Kansas. Train GSLNGV-27 consisted of 98 loaded cars and five engines. The train was 6,078 feet (1.15 miles) long.

At MP120.25 on the Beatrice Branch the train went into emergency. Brakeman Lopez inspected the train but found nothing wrong. However, wheel marks were subsequently observed at MP120.25 indicating that a car had derailed. Approximately 13 minutes later Brakeman Lopez returned to the engine and gave the Claimant a signal to proceed.

At MP122.6, five cars in train GSLNGV-27 derailed. Four of these cars were totally destroyed. The derailment caused approximately \$230,000 worth of damage.

The crew of GSLNGV-27 was notified to attend a formal investigation on February 10, 1995, to determine their responsibility, if any, for failing to properly inspect their train at MP120.25 after an undesired emergency. At that investigation Brakeman Lopez admitted that he only walked back to around the 75th car in the train after it went into an undesired emergency. Moreover, he only inspected one side of the train.

On February 17, 1995, the Claimant was assessed Level 3 discipline (five day suspension and a Corrective Action Plan developed upon his return to work) under the UPGRADE policy. The Carrier maintains that the Claimant was jointly responsible with the Conductor to ensure that all members of the crew performed their duties properly. According to the Carrier, the Claimant should have known that 13 minutes was not enough time to walk a train 1.15 miles long. The Carrier estimates that it would have taken a minimum of 30 minutes to walk the entire train.

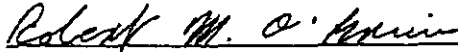
That it was the train crew's responsibility to inspect the entire train after it went into an undesired emergency at MP120.25 is undisputed. The Claimant was not responsible for walking the entire length of the train. Under the circumstances of this case, the Claimant had the right to rely on the assurance of Brakeman Lopez that he inspected the train and it was all right to proceed on the road trip.

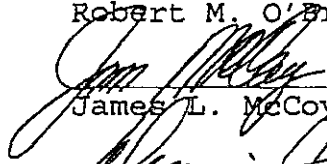
Brakeman Lopez had 22 years of railroad experience. The Claimant had worked with this train crew previously and knew they were experienced. He saw Brakeman Lopez walk back toward the rear of the train then return. The Claimant had not noticed the train tugging so had no reason to suspect that a car(s) had derailed.

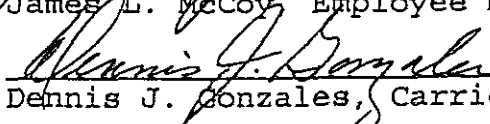
Based on all the foregoing, the Level 3 UPGRADE discipline assessed the Claimant was unjustified and his claim must be sustained as a result.

Award: Claim sustained.

The Carrier is ordered to make the within Award effective on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Neutral Member


James L. McCoy, Employee Member


Dennis J. Gonzales, Carrier Member

Dated: 12-2-98