

PUBLIC LAW BOARD NO. 5604

Case No. 23  
Award No. 23

Parties To Dispute: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-AND-

UNION PACIFIC RAILROAD COMPANY

Statement of Claim:

Claim of Second District (North Platte) Engineer M.W. Rickett 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.

On February 3, 1995, the Claimant was working as the Engineer on eastbound Train NPCB-02 between North Platte, Nebraska and Council Bluffs, Iowa. Train NPCB-02 stopped at MP44 around 12:40 a.m.

At around this same time, two Carrier officers -- Manager of Train Operations (MTO) E.W. Nettles and Manager of Operating Practices (MOP) Michael McCutchen -- were conducting efficiency testing in the Fremont area. They knew that NPCB-02 was stopped at MP44 and that a westbound empty coal train was due to operate over a public crossing in this vicinity. The two Carrier officers decided to observe the two trains.

MTO Nettles and MOP McCutchen observed the empty coal train pass Train NPCB-02 at MP44. However, they did not observe anyone from Train NPCB-02 on the ground conducting a roll-by inspection of the coal train. The two supervisors entered the cab of the locomotive and observed the Claimant sitting in the Engineer's

seat in a reclined position. Conductor Sigler was standing on the Conductor's side of the locomotive. Mr. McCutchen asked the crew members if they had given the westbound empty coal train a roll-by inspection and they said they had not.

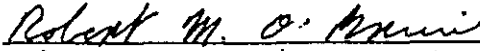
On March 5, 1995, the Claimant and Conductor Sigler were notified to attend a formal investigation on March 9, 1995, to determine their responsibility, if any, for allegedly failing to give a roll-by inspection to Train CPWAT-03 at MP44 on February 3, 1995. Through their respective representatives both employees requested a postponement of the investigation until March 20, 1995, which request was granted. On March 27, 1995, the Claimant was notified that he was found guilty of the charge and was assessed Level 3 discipline under the UPGRADE discipline policy (a five day suspension and a Corrective Action Plan upon his return to service).

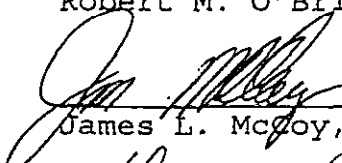
Carrier's Rule 6.29, entitled Inspecting Trains, states that "Employees must inspect passing trains" (emphasis added). The rule is not limited to train service employees. Locomotive Engineers are not required to inspect passing trains from the ground. However, if they are not otherwise engaged they must inspect a passing train from the cab.

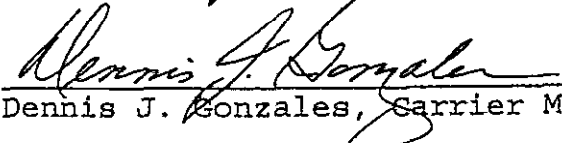
Two Carrier officers concluded that the Claimant could not inspect a passing train from where he was sitting. It should be noted that when the officers entered the cab the Claimant was sitting on the Engineer's side with his feet inclined on the heater in front of him. Moreover, the Claimant admitted to MTO Nettles that he had not given the westbound passing train a roll-by inspection when Train NPCB-02 was stopped at MP44. Since the Claimant was not otherwise engaged at the time there was nothing to prevent him from inspecting Train CPWAT-03 as it passed.

The UPGRADE Level 3 discipline assessed the Claimant for his violation of Rule 6.29.1 was justified and his claim must be denied as a result.

Award: Claim denied.

  
Robert M. O'Brien, Neutral Member

  
James L. McCoy, Employee Member

  
Dennis J. Gonzales, Carrier Member

Dated: 12-2-98