

BEFORE PUBLIC LAW BOARD NO. 5681

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
Eastern District**

and

UNION PACIFIC RAILROAD COMPANY

Case No. 82

STATEMENT OF CLAIM:

Claim of Engineer R. S. Davis of North Platte, Nebraska, for pay for all time lost and all entries of this discipline (UPGRADE Level 4) to be removed from his personal record.

FINDINGS:

Claimant R. S. Davis was employed by the Carrier as an engineer at the time of the claim.

On October 27, 1997, the Carrier notified the Claimant to either accept the proposed discipline of UPGRADE Level 4 by executing a Waiver of Hearing form or to appear for a formal investigation to determine his responsibility, if any, in connection with the charge that while he worked as an engineer on the MNPCB-18 at approximately 0643 on October 18, 1997, he allegedly passed signal displaying stop (red aspect) at CPB283 resulting in run through dual control switch #17 on Eastward Number 2, Main Line, North Platte, Nebraska. The Claimant was charged with violating Rules 9.5 and 8.15, among others, and Item 17 245Q in System Timetable No. 2. The Claimant was to be held out of service pending the results of the investigation. Because the investigation had been delayed for an extended period of time, on November 10, 1997, the Carrier notified the Claimant that he was being returned to service effective November 18, 1997, pending the outcome of the investigation.

The hearing took place on December 3, 1997. On December 11, 1997, the Carrier

notified the Claimant that he had been found guilty of the charges, was no longer qualified to meet the requirements for the position of locomotive engineer, and was being assessed an UPGRADE Level 4, thirty day's suspension. However, the Carrier found that since the Claimant was withheld from service for thirty days, October 19, 1997, through November 17, 1997, pending the investigation, that period was considered to be time served. The Claimant would be allowed to return to service only after passing a rules examination and participating in a corrective action plan upon his return to work.

The Organization filed a claim on behalf of the Claimant challenging the discipline. The Organization contends that the Carrier prejudged the Claimant and withheld the Claimant from service for thirty days without a hearing, that the incident in question was caused by a faulty signal and not by the Claimant, and that the Carrier exhibited several procedural errors in the discipline process, failed to conduct a fair and impartial hearing, failed to adequately meet its burden of proof, and failed to take into account all of the surrounding circumstances of the incident. The Carrier denied the claim based on the evidence in the record.

The parties being unable to resolve the issue, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier has failed to meet its burden of proof that the Claimant violated any rules. There were no eyewitnesses to the incident and the event recorder does not show that the Claimant passed a red signal. Also, the CAD report is inconclusive.

It is fundamental that in all discipline cases, the Carrier bears the burden of proof to show

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that the Claimant acted in violation of the rules. The Claimant made it clear that he had the proper signal the entire time. There is insufficient evidence in the record to support the Carrier's case that the Claimant acted wrongfully on the date in question.

For all of the above reasons, the claim must be sustained and the Claimant made whole and the discipline removed from the Claimant's record.

AWARD:

The claim is sustained. The discipline shall be removed from the Claimant's record and he shall be made whole.


PETER R. MEYERS
Neutral Member


CARRIER MEMBER

Dated: 1-3-2000


ORGANIZATION MEMBER

Dated: 1-6-00