

PUBLIC LAW BOARD NO. 5719

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY)	
(WESTERN REGION))	
)	NMB CASE NO. 18
VS)	AWARD NO. 18
)	
BROTHERHOOD OF LOCOMOTIVE ENGINEERS))	

STATEMENT OF CLAIM:

Appealing the UPGRADE Level 2 Discipline of Engineer R. L. Cates and request expungement of discipline assessed, and pay for all lost time with all seniority and vacation rights restored unimpaired. This action is taken as a result of investigation held on December 13 and 14, 1994.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved.

The parties to this dispute were given due notice of hearing thereon.

This dispute involved a situation where Carrier alleges claimant failed to stop his train "immediately" after the hot box detector located at MP 20.29 had indicated a defect in the train.

After formal investigation claimant was found guilty of violating Rule 13.1 and was assessed Level 2 discipline under the UPGRADE Discipline System. For this record, Rule 13.1 reads in part as follows:

"d. Stop the train at once when a detector is actuated and the train must be inspected. Inspect the car identified (by axle count from the head end of the train) to ensure that:

- * Retaining valve is in exhaust position.
- * Hand brake is fully released.
- * Brakes are not sticking.
- * Truck bolster is not broken.
- * Brake rigging is not down or dragging.
- * Lading is not down or dragging between cars, or
- * Lading is not dropped down through container floors or cross members of double stack cars."

There is no description of what Carrier meant by its use of the term "immediately," nor is there a description of what is meant by "Stop the train at once" as used in the rule. We are here dealing with a train weighing 3,320 tons traveling at 50 MPH. Such a train cannot stop "immediately" or "at once" in that there must be time allowed for the train to slow down prior to coming to a full stop. The evidence of record indicates claimant immediately applied his brakes upon receiving the message from the hot box detector and that he brought his train to a full stop shortly thereafter in a manner he felt was consistent with good train handling.

During the course of the investigation Carrier witness MTO Hardy, who inspected the site, clearly stated he "had no qualms with the way the train had been stopped."

Despite this statement by Carrier's Manager of Train Operations, Carrier attempted to prove that claimant let his train move forward an additional distance so the other crew members would not have to walk the length of the train while making their inspection. Another Carrier officer who was a witness at the investigation, Manager Operating Practices C. G. Cox, made this allegation after having reviewed the print-out of the speed tape which he allegedly pulled and then converted into a digital tape and put it on a disk for the computer.

This Board has thoroughly reviewed the complete transcript of hearing and can find no evidence therein to substantiate a finding that claimant deliberately moved his train forward in order to accommodate the other crew members who, according to the record, actually walked to the rear of the train while making their inspection.

The only thing offered by Carrier was the supposition of Mr. Cox that claimant released the brakes and rolled forward to accommodate the other crew members. Supposition, however, is not evidence, and certainly was not sufficient to find claimant guilty of the charges brought against him.

Lacking any concrete evidence that claimant failed to stop his train "immediately," it is the finding of this Board that Carrier erred in finding him guilty and assessing the Level 2 discipline, therefore, the request for expungement of UPGRADE Level 2 discipline and pay for any time lost is granted.

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AWARD

Claim sustained. Carrier is instructed to comply with this award within 30 days of the date hereof.

F. T. Lynch
F. T. Lynch, Neutral Member

D. J. Gonzales
D. J. Gonzales, Carrier Member

R. E. Dean
R. E. Dean, Organization Member

Award date October 30, 1996