

PUBLIC LAW BOARD NO. 5719

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS)

VS

UNION PACIFIC RAILROAD COMPANY)

)
) NMB CASE NO. 49
) AWARD NO. 49
)

STATEMENT OF CLAIM:

Appeal of UPGRADE Level 1 Discipline assessed Engineer E. R. Powers and request the expungement of discipline assessed and pay for all time lost with all seniority and vacation rights restored unimpaired. This action taken as a result of the investigation held on January 4, 1996.

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.

Claimant was charged with failure to "inspect locomotives in a timely manner resulting in delay to and re-crewing of the GSNCS-24 and possible delay to other trains." Following a formal investigation Carrier found claimant guilty of the charge and assessed Level 1 discipline; however, this was raised to Level 2 under the progressive provisions of the UPGRADE Discipline Policy in that claimant's discipline record was already at Level 1.

Upon reviewing the hearing transcript in its entirety, it is the opinion of this Board that there is not sufficient evidence produced to sustain a charge that claimant was guilty of causing the delay and re-crewing of the GSNCS-24 and possible delay to other trains. It is our finding here that Carrier has failed in its burden to provide substantial evidence that claimant was at fault in this instance.

The other portion of the charge deals with failure to inspect locomotives in a timely manner. While there is a dispute in the record about the time claimant was delivered to his train, Carrier made no effort to resolve the conflict, therefore, the Board will accept claimant's uncontested testimony that he was delivered to the train at 1:30 AM. When Carrier witness, Mr. L. H. Khort, arrived at the train at 5:20 AM, the inspection had been completed and claimant had so notified the Yardmaster (tr. p 6). The question before this Board then is whether or not the inspection of the three engines, plus the performance of a locomotive consist air

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brake test, was accomplished in a reasonable period of time.

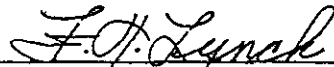
During his testimony (tr. p 14) Carrier witness Khort was specifically asked, "Does the Carrier establish any time parameters for performing daily locomotive inspections?" His reply was, "No, the Carrier states a reasonable time." Also at transcript page 15 Carrier witness Khort stated that this was just a "little bit longer *** I guess just a little bit longer than what would normally ... I should say."

Inasmuch as there are no specific time guidelines for performing the locomotive inspections and claimant's supervisor (Mr. Khort) felt that the inspection on the date in question was just a little bit longer than normal, the Board wonders just why claimant was summoned for investigation and then assessed discipline for this alleged failure to work in timely manner.

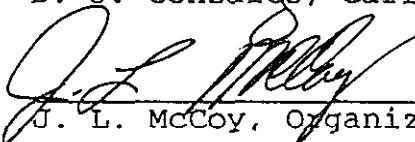
Based on the record we are unable to make a determination that claimant failed to work in a timely manner, therefore, it is our finding that Carrier erred in its decision and the discipline here assessed cannot be upheld.

AWARD

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


F. T. Lynch, Neutral Chairman


D. J. Gonzales, Carrier Member


J. L. McCoy, Organization Member

Award date March 26, 1998