AWARD NO. 24
CASE NO. 24

PUBLIC LAW BOARD NO. 5943

PARTIES TO DISPUTE	)	**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**
	)	
	)	**UNION PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM

Claim of Engineer D. D. Davis for removal of Level 1 Discipline assessed in connection with his failure to have the required Rule Book General Code of Operating Rules, Timetable and Instructions for Handling of Hazardous Materials in his possession while he was on duty as an engineer.

OPINION OF BOARD

Claimant was issued a Level 1 discipline (upgraded to Level 3) for not having certain books in his possession when his train was inspected on May 4, 1995.

According to the Carrier, Claimant did not have in his possession at the time of the inspection his Rule Book, Timetable or Hazardous Material Book. Tr. 8. Claimant does not dispute that he did not have his Rule Book or Hazardous Material Book in his possession at the time of the inspection, but asserts that he did have a Timetable. Tr. 16-17. The Conductor on Claimant's train, J. L. Kelly, did have all three books. Tr. 11, 18. Claimant testified that he knew Kelly had those books before Claimant's train departed. Tr. 18.

The relevant rules provide:

Rule 1.3.1 Rules, Regulations and Instructions

General Code of Operating Rules - Employees governed by these rules must have a current copy they can refer to while on duty.

Hazardous Materials - Employees who in any way handle hazardous materials must have a copy of the instructions or regulations for handling these materials. Employees must be familiar with and comply with the rules or regulations.

Timetables/Special Instructions - Employees whose duties are affected by the Timetables/Special Instructions must have a current copy they can refer to while on duty.

* * *

1.15 Duty Reporting or Absence

Employees must report for duty at the designated time and place with necessary equipment to perform their duties.

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Timetable Item 7

> Employees must provide themselves with their own copy of the following and have them available for reference [listing the documents at issue].

Giving the Carrier the benefit of the doubt that Claimant did not have all three books (Claimant asserts that he did have the Timetable), this claim still must be sustained.

The burden is on the Carrier. The rules do not clearly provide that each employee must have copies of all three books on their person while working. For Hazardous Materials, the employees only "must have a copy of the instructions or regulations for handling these materials" and for Operating Rules and Timetable, the rules only provide that employees must have a "copy they can refer to while on duty". At the time of the inspection, the Conductor had all three books. Those books were thus readily available for Claimant to "refer to while on duty".

Because the Carrier has the burden, if there is any ambiguity here, that ambiguity must be resolved against the party asserting application of the ambiguous rule — here, the Carrier.

We note that it is akin to Russian roulette for an employee to come to work without having the appropriate books and to take a chance that some other members of the crew will have the books with them. It therefore behooves the employees to bring all their books at all times. Similarly, if the Carrier desires that each employee have books in their possession while on duty, that requirement must be made clear.

However, for the facts of this case, at most, the rules only require that employees have a "copy they can refer to while on duty". When the Conductor had the books, those books were available for reference by Claimant.[1]

The Carrier's burden has not been met. The claim will be sustained. The discipline shall be rescinded and Claimant shall be made whole.

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[1] The language in Item 7 does not change the result ("Employees must provide themselves with their own copy of the following and have them available for reference [listing the documents at issue]"). While the language refers to having "their own copy ... available for reference", that language does not clearly require that the possession and availability for reference be "while on duty".

AWARD

Claim sustained.

Edwin H. Benn
Neutral Member

Carrier Member

Organization Member

Fort Worth, Texas

Dated: May 24, 1999