

AWARD NO. 9
CASE NO. 9

PUBLIC LAW BOARD NO. 5943

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

STATEMENT OF CLAIM

Claim of Engineer J. P. Hogue for removal of Level 4 discipline from record and payment for 30 days suspension assessed as a result of passing a red signal without stopping.

OPINION OF BOARD

Claimant received a 30 day suspension for passing a red signal on June 10, 1995.

The record shows that while operating OLWDA 10, Claimant proceeded through CP 914 in Dallas which caused an alert to Dispatcher B. Christian in Omaha of movement past a red signal.

Claimant testified that the signal was initially a stop but changed to an approach. Tr. 25-26. Claimant was adamant that when he proceeded he had an approach signal (Tr. 32):

Q: Is there any doubt in your mind that the signal was not an approach signal?

A: No doubt whatsoever.

Claimant's Conductor, R. D. Peebles corroborated Claimant's version. According to Peebles, the signal initially displayed red and the train came to a stop. Tr. 10-11. The signal then changed to an approach, that change was called out and the train proceeded. Tr. 12.

Subsequent checking of the system by the Carrier showed no malfunction of the signal in question. According to the Carrier, the signal on Number 1 Main Track was an approach. However, Claimant was on Number 2 Main Track. The Carrier contends that Claimant read the wrong signal.

According to Claimant, at the time, there was substantial lightning activity in the area (Tr. 31):

Q: What was the weather like on this night - - evening in question?

A: Visibility was good. There was quite a bit of lightning. There was no rain, no fog.

Q: Would you describe the lightning as intense light or rough, or what?

A: I would describe it as dangerous, intense. Quite a bit of lightning.

See also, Tr. 122, 134 where others in the area described the weather as a "pretty good storm" with "lightning".

According to Dispatcher Christian, there were signal problems in the area that evening (Tr. 55-56):

Q: Had you had trouble with this control point on your shift before the OLWDA arrived at CP T914?

A: Yes. But not that particular signal.

* * *

... I had trouble the opposite direction from 1 to 2. Well, 1 to the Waxhahachie Sub.

* * *

Okay. Yeah. I have had some problems.

The Dispatcher gave further testimony concerning "some problems" that night (Tr. 71-72):

A: ... I had had a problem at, I believe it was T220 at Chalk.

* * *

But I'm not sure they would be considered a false as much as it shows a signal and then it showed the signal dropping.

Engineer E. D. Warner was working under the Dispatcher's jurisdiction

around the time of the incident involving Claimant. Tr. 120. According to Warner, he had a conversation with the Dispatcher concerning Chalk (Tr. 120-121):

A: ... We had come by Chalk, which is CP T220, on an approach limited, I'm pretty sure it was. And he asked me on the radio if I had stopped, was I stopped at 220. I believe it was. And I told him, no, we're by 220. And he said, what kind of signal did you have at 220, and I told him we had an approach limited. And he said, well, I'm getting some false indications, or some false readings. I believe he said false indications.

And then I come up to CP 217 ... and I had an approach signal there. ... I went by 217, and I had an approach signal at 216. And 216 went red in my face. And I got stopped before got by the signal. And then he said, yeah. He said, we're having false -- I called him ... and he told us to take the switch off power, line it from our move, 2 to 2. And I said, well, 215 just dropped down, too. ... [H]e said, well, I'm having signal troubles

J. T. York, the Conductor with Engineer Warner, testified that Dispatcher Christian inquired where they were in relation to Chalk and that the Dispatcher stated "the signal had dropped out on him"

A tape of the Dispatcher Christian's conversation with Engineer Warner shows the Dispatcher stating (Tr. 243-245):

CHRISTIAN: Okay. Getting some false indications is what

I'm getting - - or, false read-backs
to my board. ...

* * *

Yeah, I'm getting some false read-
backs back here. ...

* * *

So we're getting some false read-
backs from somewhere.

The question before us is whether there is substantial evidence in the record to find that Claimant proceeded past a red stop. The burden is on the Carrier to make that showing. That burden has not been met.

Claimant and his Conductor were adamant that they had a red which changed to an approach and they proceeded accordingly and therefore did not go past a red signal. The Dispatcher contends that Claimant had a red as indicated on his computer. If that is all this record showed, we would deny the claim. However, the evidence further shows — and the Dispatcher admits — that there were signal problems that evening in the area. According to Dispatcher Christian, another Engineer (Warner) and Conductor (York) at another location in the area Christian was getting false read backs. Given those signal problems, we are not sufficiently persuaded that there were no

similar problems when Claimant proceeded through CP 914 on what Claimant and his Conductor contend was an approach and not a stop. Thus, we find that the Carrier has not shown by substantial evidence that Claimant proceeded through a red stop as charged.

The fact that the signal system was checked out hours later and no problems were found does not change the result. There were problems in the area that evening and we are just not satisfied that the charges against Claimant were not premised on information stemming from the source of those signal problems.¹

The discipline shall be rescinded and Claimant shall be made whole.

¹ The Carrier points us to *PLB 2105, Award 192* indicating that Conductor Peebles was dismissed and took a leniency reinstatement. That award does not change the result. That short award did not discuss the facts leading up to the discipline, but only addressed a procedural issue concerning the Carrier's overruling of the superintendent's acceptance of the Conductor's leniency reinstatement.

In light of the result, the Organization's procedural argument is moot.

AWARD

Claim sustained.

Edwin H. Benn

Edwin H. Benn

Neutral Member

Al Hallberg

Carrier Member

Jim May

Organization Member

Fort Worth, Texas

Dated: May 24, 1999