

PUBLIC LAW BOARD NO. 6040

AWARD NO. 13
NMB CASE NO. 13
UNION CASE NO. S. G. Chapman
COMPANY CASE NO. 9600348

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
(Eastern District)

STATEMENT OF CLAIM: Claim of Engineer S. G. Chapman of Fremont, Nebraska, for pay for all time lost (1 day attending Formal Hearing) and removal of any entry of this discipline (UPGRADE Level 2) from his personal record.

OPINION OF BOARD: On October 23, 1995 Engineer S. G. Chapman ("Claimant") was operating the Westbound CSNBM-21, an empty unit coal train, controlling his train with two (2) locomotives from the lead unit UP 6095. The Claimant's train was an empty unit coal train and he was controlling his train with two (2) locomotives (lead unit UP 6095). Shortly after arriving at the North Platte, Nebraska Terminal, at approximately 7:50 AM, Claimant Chapman's Conductor, Mr. Grace, was instructed by the North Platte Supervisor of Train Operation (STO Bruns) to pass over the dual control switch at approximately CPB 287 inbound Coal Lead #2, Switch #3. After stopping for the red signal at CPB 287, as required by the rules, the Claimants Conductor, Mr. Grace, spoke with the STO via radio and was given instructions to proceed past the red signal at CPB 287, concluding with the instruction "[Y]ou'll have to hand line our switches in 291." The Conductor responded "OK, we have permission to pass signal displaying red indication on that B287, the Old Belt, and we'll have to hand line our switches in 291." After being briefed by his Conductor, Mr. Chapman then proceeded at restricted speed past the red signal and dual control switch at CPB 287. At this point

the lead wheel of lead unit UP 6095 derailed.

Following an investigation held on December 14, 1995 after postponement from November 22, 1995 at the request of the Organization representing the Conductor, Carrier notified the Claimant on December 21, 1995 that his personal record had been assessed with Level 2 under the UPGRADE Progressive Discipline Policy. That level of discipline required Claimant Chapman to serve a one day or one round trip alternative assignment with pay to develop a corrective action plan to modify behavior. Claimant and the BLE appeal his discipline on several procedural grounds and on the ground that Carrier failed to adduce sufficient evidence of his culpability. Our review of the record evidence does not persuade us that all of the procedural objections were well-founded, but we do find a fatal error in that the determination of guilt and the imposition of discipline was made before the transcript of the investigation was even completed. In that connection, the record plainly shows that the discipline letter was dated December 21, 1995, whereas the "Transcriber's Certification" shows she did not complete transcription of the hearing record until December 22, 1995. We certainly do not concur with Carrier's assertion that it was appropriate or fair for the Hearing Officer to determine culpability and assess discipline in reliance on his personal notes and recollections of the investigation rather than the official certified transcript of the proceedings. For that reason, we shall sustain the claim without expressing or implying any opinion concerning the underlying charges.

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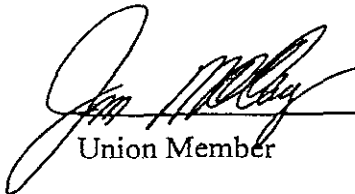
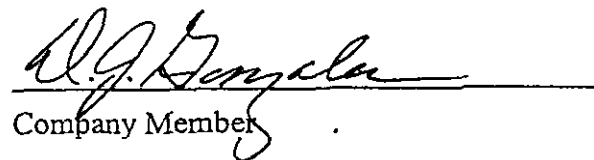
AWARD

- 1) Claim sustained.
- 2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.



Dana Edward Eischen, Chairman

Dated at Spencer, New York on January 15, 1999


Union Member
Company Member