

PUBLIC LAW BOARD NO. 6040

AWARD NO. 6
NMB CASE NO. 6
UNION CASE NO. L.A. Davis
COMPANY CASE NO. 9600352

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
(Eastern District)

STATEMENT OF CLAIM: Claim of Engineer L. A. Davis, of North Platte, Nebraska for pay for all time lost and all entries of this discipline (Level 3) to be removed from his personal record.

OPINION OF BOARD: Engineer L. A. Davis ("Claimant") was assessed Level 3 Upgrade discipline (5 day suspension) following a postponed investigation held November 2, 1995 to look into charges that "on Thursday, October 5, 1995, while employed as Conductor on the CNAPG-03, W 26. 1, North Platte Sub., you allegedly blocked road crossing with Track Bulletin No. 4008 1, dated September 28, 1995, Line 16 states, 'Do no block road crossing at MP 27. 11 with standing train'."

It is not disputed that the Notice of Charge was factually inaccurate in that Claimant was charged for dereliction as a Conductor while in fact she was working as Engineer of the train on the date in question. Of greater consequence, however, is the fatal procedural flaw which Claimant and her BLE representative protested at the outset of the investigation on November 2, 1995 and the Organization preserved throughout handling, *i.e.*, Carrier failed to present Claimant or her representative with the Notice of Investigation until the day of the postponed hearing on November

2, 1995.

The Notice of Investigation, which contained the charge against her and set the original hearing date for October 18, 1995, was sent by U.S. Mail Certified Return Receipt dated October 13, 1995. Claimant testified that she never received said correspondence until a Carrier representative presented her with a copy at the November 2, 1995 hearing. When timely objection was made by the BLE representative, the Hearing Officer conceded that Carrier had no signed Return Receipt card to certify delivery and receipt of that Notice of Investigation. Nor was that egregious procedural defect cured by the fact that Claimant subsequently signed for a copy of a certified letter dated October 16, 1995, granting a request by a different Organization representing the Conductor of her train, for a postponement of the joint hearing previously scheduled for October 18, 1995. That notice of postponement alluded to but did not include the Notice of Investigation and specification of charges against Engineer Davis, which were never seen by Claimant until the date of the November 2, 1995 hearing. This serious procedural flaw requires that we sustain the claim without expressing or implying any opinion concerning the underlying charges.

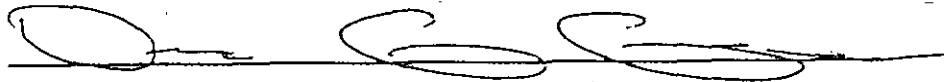
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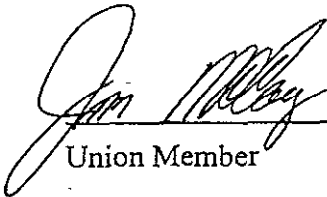
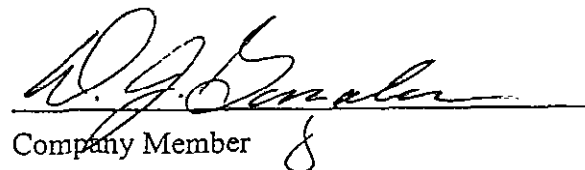
1) Claim sustained.

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 14, 1999


Union Member
Company Member 8