

PUBLIC LAW BOARD NO. 6040

AWARD NO. 12
NMB CASE NO. 12
UNION CASE NO. Vogelsberg
COMPANY CASE NO. 9502115

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
(Eastern District)

STATEMENT OF CLAIM: Claim of Engineer R. J. Vogelsberg of Marysville, Kansas for pay for all time lost and all entries of this discipline (UPGRADE Level 1) to be removed from his personal record.


OPINION OF BOARD: Engineer R. J. Vogelsberg ("Claimant") was working as an Engineer in Through Freight Service on March 14, 1995 between North Platte, NE (far terminal) and Marysville, KS (home terminal) on the XNPNL-13, an eastbound train. A hearing was held on April 26, 1995 and the Claimant was subsequently issued an UPGRADE Level 1 (Letter of Reprimand), on grounds that he had dimmed his headlight at approximately 0023 hours over a public crossing near Keith, NE on the Council Bluffs Subdivision. Close examination of the evidentiary record persuades us to reverse that disciplinary action.

There was some apparent contradiction in the testimony of Carrier's complaining witnesses: MOP Bonneville testified that he observed the Claimant operating with his headlight on dim at a crossing with a business located nearby which would have been the crossing at M.P. 272.8 (Millers Crossing), while MOP Jungck testified that he observed Engineer Vogelsberg at M.P. 273.9 at a crossing with no nearby business, a wide open crossing. Claimant testified

without contradiction that there was a train stopped at the crossing in question with a crew member on the ground protecting the crossing and giving his train a roll-by. Claimant, a 23 year railroad veteran with a completely unblemished record, also testified that he left the headlight on but dimmed over the crossing to keep from blinding the crew member on the ground at the crossing and also to ensure that any highway traffic approaching would not be blinded from seeing the person flagging the crossing. In the unique circumstances of this record, we find the imposition of discipline was not warranted and must be reversed.

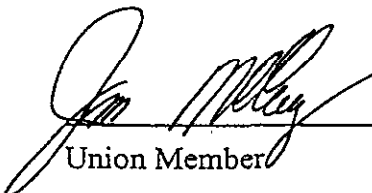
AWARD

- 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