

PUBLIC LAW BOARD 6099
AWARD NO. 146

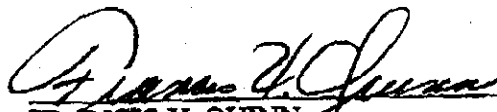
Parties to Dispute: Union Pacific Railroad Company
(formerly Missouri Pacific)
and
United Transportation Union

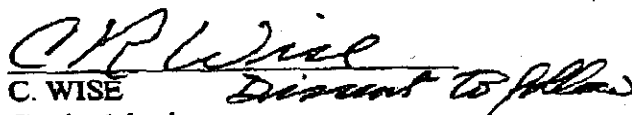
Statement of Claim: Request of Engineer L.A. Frank for removal of Level 5 discipline.

Findings: The record indicates that while Claimant's train approached Corps Chapel Road at the west end of Woolridge, Missouri, the train's whistle did not properly sound at the quarter mile marker as required by Rule 5.8.2. When crew observed a vehicle crossing the tracks, the train was placed into emergency and the horn was sounded manually but not in time to avert a fatal accident. The post accident investigation raises serious questions concerning the regular functioning of the whistle sequencer. It was reported to be functioning one minute before the accident but not working properly earlier during the trip. The whistle activated by hand-push mechanism on the console was OK. The sequencer, which sounds the whistle at intervals and is operated by a foot pedal, appears to have been operating sporadically. The crew believed the horn system was operating. The Claimant asserts that he stepped on the whistle sequencer. There were no indicator lights on the console to indicate that the whistle was actually sounding. In the American Cab engine when the windows are closed and the air conditioner is on high, it is not always possible to verify the whistle's sounds.

The record in this case does not support that the Claimant was guilty of willful disregard and negligence for the safety of others in failing to properly sound the engine whistle at the public grade crossing in question. See Awards 26 and 33 of Public Law Board 5170. We must sustain the claim.

Award: Claim sustained.


FRANCIS X. QUINN
Chair and Neutral Member


C. WISE
Carrier Member


RICHARD E. KARSTETTER
Organization Member

July 18, 2003
Omaha, Nebraska

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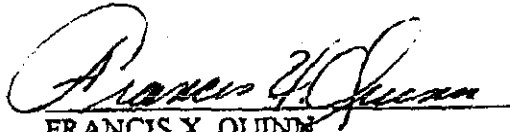
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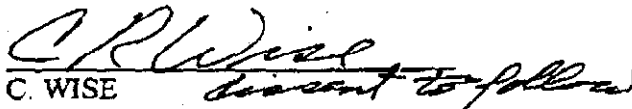
Statement of Claim: Request of Engineer L.A. Frank for removal of Level 5 discipline with pay
for all time lost.

Findings: When tape was downloaded from Claimant's engine, it was determined that crew
had not sounded train's horn at several crossings on July 17, 2002. Carrier asserts
that the blue console light that illuminates when the horn sounds functioned
properly. The record in fact indicates that in the American Cab in question, there
were no indicator lights on the console to indicate that the whistle was actually
sounding.

The crew believed the horn sequencing mechanism was working properly.
Apparently, it was not. The Carrier has not met the burden of establishing
negligence for the safety of others. See Award 146 of this Board.

Award: Claim sustained.


FRANCIS X. QUINN
Chair and Neutral Member


C. WISE
Carrier Member


RICHARD E. KARSTETTER
Organization Member

July 18, 2003
Omaha, Nebraska