

PUBLIC LAW BOARD NO. 6155

Case No. 15
Award No. 15
Carrier File No. 9503701
Organization File No. 06205A
NMB Code 106
Claimant: Engineer R. A. Maldonado

PARTIES TO THE DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

AND

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

The Organization appeals the Level Three (3) Discipline assessed Engineer R. A. Maldonado and requests the discipline be expunged from the Employee's personal record, as well as, pay for all lost time with all seniority and vacation rights restored unimpaired.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds that the parties are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated July 29, 1998, that this Board has jurisdiction over the dispute involved herein.

By certified letter dated November 28, 1994, the Carrier directed the Claimant to attend an Investigation at the Manager Train Operations Conference Room UPR, 2745 N. Interstate, Portland, Oregon on Wednesday, November 30, 1994. The purpose of the hearing was to develop facts to determine if the Claimant was responsible for violating Rule 9.12.4 of the Union Pacific Rules, effective April 10, 1994. The cited rule reads as follows:

9.12.4 ABS TERRITORY

At a signal displaying a Stop indication outside interlocking limits, the train will be governed as follows:

A. Main Track

On a main track, after stopping, a train authorized beyond the signal must comply with one of the following procedures:

1. If authority beyond the signal is joint with other trains or employees, proceed at restricted speed.
2. Proceed at restricted speed when a crew member has contacted the train dispatcher and obtained permission to pass the Stop indication. However, if the train dispatcher cannot be contacted, move 100 feet past the signal, wait 5 minutes, then proceed at restricted speed.

The hearing was postponed and held on December 2, 1994.

After reviewing the evidence adduced at hearing, the Carrier issued a Level Three (3) Discipline.

The incident which caused the Claimant to be charged with a possible violation of the above rule occurred on October 26, 1994, near MP 16.5 on the Kenton Line, Subdivision No. 861, while he served as the Engineer on the LID63-26. Around 7:30 p.m., the Manager of Yard Operations, along with Director of Train Operations, conducted an efficiency test on the Claimant's train which was a local. They set up a red block test. The crew stopped as required, but, then proceeded without contacting the Dispatcher. The crew was told to stop their train at MP 14 and they were confronted by the efficiency team.

The Carrier Officers advised the crew that the rule required them to stop and obtain permission from the Dispatcher before proceeding, or, they were to proceed 100 feet past the signal and wait 5 minutes before going any farther. The rule was new and had become effective in the Spring of that year.

CARRIER'S POSITION

The Carrier holds that the crew did not stop or contact the dispatcher as required by Rule 9.12.4. They assert that the crew admitted being in violation of the rule when it was pointed out to them at the time the officers boarded their engine on the day of the efficiency test. The Carrier also contends that crews are responsible for reviewing the rules as updated and must be familiar with the requirements of any given rule.

The Carrier asserts that the Claimant was afforded due process and given a fair and impartial hearing. They contend the penalty issued was governed by the UPGRADE policy and was reasonable for the rule infraction cited.

ORGANIZATION'S POSITION

The Organization argues that the hearing was not conducted in a fair and impartial manner. They point out that the hearing officer, was also the reviewing officer, thus, he was judge, jury

and executioner. In addition, the Organization claims that the hearing officer was involved in the meeting wherein Form 1 and Form 2 were given, and/or, offered to the Claimant. They contend such facts evidence a predisposition against the Claimant on the part of the hearing officer. Furthermore, they argue, the issuing officer had already filled out the discipline form before he talked to the Claimant and he did not contact the Claimant within the required 24 hour period provided by the guidelines.

The Organization points out that Rule 9.12.4 is a new rule and a major change in the way trains operate. They argue the discipline issued, under the circumstances, demonstrates that efficiency tests are punitive rather than educational.

Finally, the Organization asserts that the issue is whether the Claimant met the living requirements of the rule. They contend that the Claimant stopped at the red block signal and, believing he had authority to proceed, did so at restricted speed, safely and efficiently. They argue that the discipline assessed to the Claimant under the UPGRADE policy is punitive, whereas, the ADEPT program which is still in effect, provides educational discipline. This method, they say, is far more effective with employees and should be used in lieu of the UPGRADE policy.

DECISION

The Board in reviewing this matter, finds that the Carrier did fail to comply with the intent of guidelines issued by Jerry Heavin and in effect at the time of the incident. First of all, they failed to contact the Claimant within 24 hours to discuss the completion of Form 1. Secondly, they did not allow the Claimant the opportunity to contact his representative in advance. Allowing the Claimant to contact his Representative on the day of the meeting falls short of compliance with the guidelines.

As to the merits, there is no doubt the Claimant thought he had joint authority and proceeded accordingly. The Carrier's witness testified that the Joint Authority did not start until two miles beyond the block, however, the Claimant's testimony was that he had authority from MP 22 to MP 6. That would have placed him within his track authority. There was no physical evidence presented to confirm either position. The fact that the crew admitted they were in violation of the Rule once it was explained to them, certainly doesn't support a finding that they knew they were in violation of the rule when they proceeded past the signal.

There is no doubt the Engineer should have familiarized himself with rule changes and he testified that he had read the rule. He explained he found the rule confusing, but, thought he

was doing the right thing on the day in question. If we look at the rule, it is easy to understand the Engineer's confusion. If an engineer assumes his track authority is the authority referred to in the first paragraph of Section A. Main Track, then Item 1 states that an employee should proceed at restricted speed if he has joint authority beyond the signal. The Claimant stopped at the signal and proceeded at restricted speed. The Claimant's actions on the night in question gave every indication that he thought he was following this aspect of the rule. Furthermore, even though employees have an obligation to be familiar with a new rule, the Carrier also has an obligation to clarify new rules to its employees, especially when a rule could conceivably be subject to two interpretations, which appears to be the case here. There was no evidence that the Carrier had conducted meetings on this rule or educated the employees in any other way.

In view of all of these factors, we believe the penalty issued was excessive.

AWARD

The Level Three (3) Discipline issued to the Claimant is to be reduced to a Level Two (2) Discipline. He is to be reimbursed any loss in wages and all seniority and vacation rights restored unimpaired. The Carrier is to comply with this Award within thirty (30) days of its receipt.



Carol J. Zamperini
Chairman and Neutral Member

This 3rd day of November, 1998.
Denver, Colorado