

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 3689

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

AWARD NO. 8

Case No. 8

STATEMENT OF CLAIM

1. Claim of the System Committee of the Brotherhood that the Carrier's decision of September 20, 1984 to assess Section Foreman Mr. P. Atencio's personal record with thirty (30) demerits was in violation of the provisions of the current Agreement and in abuse of discretion.

2. The Carrier will now be required to remove the thirty (30) demerits from Claimant's personal record and no further reference be made thereof.

FINDINGS

Claimant, a Section Foreman, was subject to an investigative hearing concerning an incident on June 28, 1984 in which he "allegedly failed to follow proper procedures in placing a Slow Order on the westbound track between M. P. 767.75 and M. P. 768.00". Following the hearing, the Carrier assessed 30 demerits on the Claimant.

From the record, it is clear that the Claimant had the responsibility to advise the Dispatcher to enter the cited Slow Order, in view of a defective track section under repair by the Claimant and his crew. Although the Dispatcher learned of the necessity for caution from another source, the Claimant failed to take the initiative in timely fashion to advise the Dispatcher. While the Claimant was present when the Signal Maintainer confirmed the need for a Slow Order to the Dispatcher, this call was at the Dispatcher's initiative.

The fact that a possibly serious incident was averted does not lessen the responsibility of the Claimant.

The Carrier cited the second paragraph of Rule 12 (C) of the Maintenance of Way and Signal Rules, which reads as follows:

If track or bridge is safe for movement of trains at a reduced speed, the train dispatcher must be advised as to the location and speed restrictions required. Yellow and green signals must be placed as prescribed.

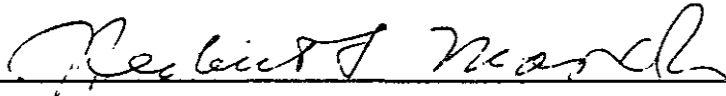
The Organization points out that the rule does not specify who is responsible for advising the Dispatcher. The Claimant, however, was aware that, in this instance, it was

his responsibility. While he had discussed the problem with a Carrier representative, the Carrier fairly concluded that the Claimant was remiss in his duty.

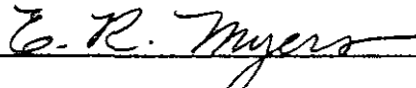
Having determined the Claimant's guilt, the Carrier properly considered his past disciplinary record. There were two previous instances of the imposition of 30 demerits within the previous 27 months. The resulting penalty herein was fully warranted.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Chairman and Neutral Member



E.R. MYERS, Carrier Member



C.F. FOOSE, Employee Member

New York, N. Y.

DATED:

December 17, 1985