

BEFORE
PUBLIC LAW BOARD NO. 5263

IN THE MATTER OF THE ARBITRATION BETWEEN:

THE UNION PACIFIC RAILROAD COMPANY
(FORMERLY THE CHICAGO AND NORTH
WESTERN TRANSPORTATION COMPANY)

AND

THE UNITED TRANSPORTATION UNION

)
) AWARD NO. 129
) CASE NO. 144
)

) Reprimand of Engineer
) A. G. Prado.
)

I. THE CLAIM

Claim of Engineer A. G. Prado, for the removal of a Level 1 (Letter of Reprimand) of the UPGRADE Progressive Discipline Policy from his personal file and that the Claimant be compensated for any and all lost time attending investigation(s) or being held out of service.

II. FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated May 6, 1991, and has jurisdiction over the parties and the subject matter.

Grievant was assessed a Reprimand (Level 1 of the UPGRADE System) for failure to display ditch lights while operating his train on September 28, 1997. He was observed by the Manager of Operating Practices, who testified that he observed the train approach a crossing without displaying the ditch lights as required by the rules, and observed them turned on a few seconds later. The Grievant denies that he was operating the train without the ditch lights displayed, and maintains that they were on at all times, except when he approached and passed another train at or about that time. The Carrier Officer maintained that there were no trains "in sight" at the time of his observation.

The Union urges that we not consider this a simple contest of credibility between two competing witnesses, because there was other evidence available, but the Carrier failed to provide the event recorder

Prade Reprimand

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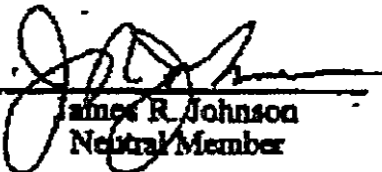
which could have established whether or not the lights were on and displayed, and neither did it furnish evidence concerning the proximity of other trains at the time, which could have resolved the conflict about whether the lights were appropriately dimmed as alleged by the Grievant.

This Board and others have held that the Hearing Officer is in the best position to resolve questions of credibility among witnesses, and, generally, we are reluctant to disturb that judgment. However, that does not apply when Hearing Officers rush to exercise that prerogative, instead of attempting first to resolve the conflict by developing all the relevant evidence available. In this case, the event recorder and documentation of other train movements in the area might have produced a different result. Without that evidence, however, the Hearing Officer and we will never know.

The Carrier did not meet its burden of proof. We will sustain the claim.

III. AWARD

Claim sustained.


James R. Johnson
Neutral Member


C. R. Wiso
Carrier Member


David R. Haack
Employee Member

Dated: 1/19/98