

Award No. 511  
Case No. 511

PUBLIC LAW BOARD NO. 5383

BROTHERHOOD OF LOCOMOTIVE ENGINEERS )  
 )  
 vs. ) Parties to Dispute  
 )  
 UNION PACIFIC RAILROAD COMPANY )

STATEMENT OF CLAIM:

Claim in behalf of Brakeman S. D. Garls, Union Pacific Railroad, former Chicago and North Western Transportation Company, for compensation for all lost time including time spent at the investigation and that this incident be removed from Claimant's personal record when he was investigated on the following charge:

"Your responsibility for your failure to properly perform your duties when you got on and off a moving flat car (HTTX 97959) at Adams Street Yard at approximately 8:15 p.m. on June 20, 1984, while you were employed as head brakeman on Extra 6824 North (GCEMA)."

## FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

Claimant Brakeman was given thirty (30) days suspension when found responsible for getting on and off a moving flat car while making a pick up. This discipline activated fifteen (15) days deferred suspension attached to Claimant's record.

At the investigation, Carrier officers testified that they had observed Claimant getting on and off a flat car in violation of Rule 144 which says that "Employees must not get on or off of moving tank cars or flat cars, except in emergency".

Claimant stated that he got on the car as the slack ran in and got off as the slack ran out, thereby getting on and off non-moving equipment.

The Board finds that there was either a technical violation of the rule or a technical non-violation and we cannot convincingly determine which. The Carrier officers were about one-quarter (1/4) mile from the scene and said that the cars in question were moving very slowly. Claimant contended he was playing the slack, apparently to avoid violation of Rule 144. In the absence of sufficient evidence, we hold that the discipline should be set aside.

AWARD

Claim is sustained.

ORDER

The Carrier is ordered to make this Award effective within thirty (30) days from the date shown below.

B. L. MacArthur  
Employee Member

W. J. G. G. G. G.  
Carrier Member

D. J. G. G. G.  
Chairman and Neutral Member

Dated: Feb 20, 1998