

Award No. 553
Case No. 553

PUBLIC LAW BOARD NO. 5383

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

STATEMENT OF CLAIM:

Claim in behalf of Engineer G. H. Erb, Union Pacific former Chicago and North Western Transportation Company for compensation for all lost 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 perform your duties properly on January 27, 1983 at approximately 2:30 AM in the vicinity of Haydite, Missouri when you failed to acknowledge or respond to a red lighted fusee displaying a stop signal while you were assigned as crew members of Extra 6876 South."

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 Engineer was found responsible for failure to respond to a red lighted fusee displaying a stop signal. He was disciplined with fifteen (15) days suspension.

According to the transcript of investigation, the fusee was placed for an efficiency test and no member of the crew responded to it.

The problem the Board sees with finding the Engineer at fault is that the supervisory employee who conducted the efficiency test stated that he was testing the rear end crew and the head end could not see the fusee. It is stated (Tr., p.5):

"The head end would have been around the curve and on straight track. It's doubtful whether the head end crew would have seen me because they were, of course, looking forward as they were passing over public crossings."

While Claimant may have been guilty of rule violations pertaining to communicating with the rear end, there was no

charge against him concerning this matter. He should not be found at fault for something not included in the statement of charges.

The discipline here shall 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. H. Isaac Arthur
Employee Member

R. A. Gonzalez
Carrier Member

D. Kelly
Chairman and Neutral Member

Dated: 3-20-98