

Award No. 614
Case No. 614

PUBLIC LAW BOARD NO. 5383

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

STATEMENT OF CLAIM:

The Brotherhood of Locomotive Engineers Union Pacific, former Chicago and North Western request the Division compensate Engineer R. M. Guinn for all time lost including time spent at the investigation and that this incident be removed from Claimant's personal file when he was investigated on September 29, 1981 regarding the following charge:

"Your responsibility for the derailment of CNW 128009 at Hanly, Iowa at about 1:40 A.M. on August 27, 1981, while employed as crew members on Extra 6934 South, called for 11:15 P.M., August 26, 1981, at Des Moines, Iowa."

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 Fireman (Student Engineer) was found responsible in connection with a derailment and he was disciplined with five (5) days actual suspension.

The essential facts are that a setout was made of a bad-order which was twenty-seven (27) cars deep from the engines. A portion of the car was shoved a few feet beyond the stub-end of the track being used. Claimant was operating the engine at the time and was moving according to radio instructions from a member of his ground crew.

The Board has reviewed the transcript of investigation in this case and we find that there is not adequate evidence to determine that Claimant committed a rule violation. The engines were twenty-seven (27) cars from the point of the derailment. There is nothing in the record to show that he did other than as directed by a trainman who testified that Claimant acted

"promptly and properly". Accordingly, the discipline must 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. MacArthur
Employee Member

W. J. Gonzalez
Carrier Member

D. Kelly
Chairman and Neutral Member

Dated: 6-23-82