

PUBLIC LAW BOARD NO. 5604

Case No. 29

Award No. 29

Parties To Dispute: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-AND-

UNION PACIFIC RAILROAD COMPANY

Statement of Claim:

Claim of Fifth District (Cheyenne) Engineer S.P. Noud for removal of Level 2 discipline from his personal record and pay for all time lost.

Findings:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

On October 23, 1995, Claimant was working as the Engineer on Train STNP-19 operating eastbound between Rawlins and Cheyenne, Wyoming. For approximately 17 miles and some 35 minutes the Claimant used pressure to maintain braking while descending a steep grade at a speed exceeding 30 MPH between MP512.45 and MP534.30. Using extended braking while operating over 30 MPH can cause a thermal crack in the wheels. A thermal crack in a wheel is caused by heat generated on the tread and flange of the wheel because of excessive braking. Fortunately, there was no wheel damage to the STNP-19 on October 23, 1995.

The Claimant was notified to attend a formal investigation on November 9, 1995, to determine his responsibility, if any, for using pressure maintaining braking for an extended period of time at a speed exceeding 30 MPH on October 23, 1995. On November 16, 1995, the Claimant was found guilty of this charge and assessed UPGRADE Level 2 discipline (up to one day or round trip with pay and development of a Corrective Action Plan).

Rule 31.6 of the Carrier's General Code of Operating Rules addresses grade braking. Rule 31.6.1, entitled Pressure Maintaining Braking, provides, in pertinent part, as follows:

"Do not use pressure maintaining braking for extended periods at speeds exceeding 30 MPH. Otherwise, wheels and brake shoes will be damaged. Use the application and release method of braking at speeds exceeding 30 MPH...."

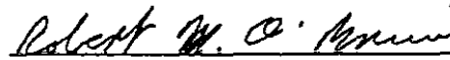
The rule does not define what constitutes "extended periods." The Carrier's technical training located at Salt Lake City, Utah, claims that an extended period of time would be a distance exceeding four (4) miles. However, there is no evidence that the Carrier posted a notice or bulletin explaining what was considered an "extended period" for purposes of Rule 31.61. The Claimant insists that he was never told any specific distance for pressure maintaining braking.

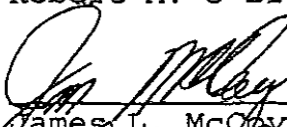
The Claimant said that he used pressure maintaining braking since he was descending a steep grade between MP512.45 and MP 534.30 and visibility was poor since it was snowing heavily. The Claimant maintained that because of the extreme cold he was reluctant to release the train brakes due to the time it takes to recharge the air brake system. Inasmuch as it was dark and visibility was poor he was uncertain what might be ahead of him while he was descending the steep grade on Sherman Hill.

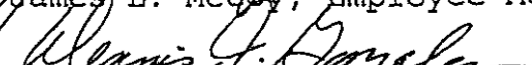
The Claimant exercised caution by keeping the brakes applied while he was descending steep grade between MP512.45 and MP534.30, in this Board's opinion. Due to the weather conditions prevailing at that time the caution he exercised was not improper. Therefore, the Level 2 discipline assessed him on November 16, 1995, was unjustified and the claim must be sustained as a result.

Award: Claim sustained.

The Carrier is ordered to make the within Award effective on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Neutral Member


James L. McCoy, Employee Member


Dennis J. Gonzales, Carrier Member

Dated: 12-2-98