

PUBLIC LAW BOARD NO. 5943

PARTIES )  
TO )  
DISPUTE )

BROTHERHOOD OF LOCOMOTIVE ENGINEERS  
  
UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM

Claim on behalf of Engineer J. R. Ochoa for removal of Level 4.5 discipline assessed as the result of an investigation May 30, 1995 for proceeding from the location of a red flag without authority and also seeking pay for sixty (60) days for time lost while suspended.

OPINION OF BOARD

While in road service on May 17, 1995, Claimant's train was proceeding northbound from Brownsville, Texas on the Texas/Mexican border when he encountered a red flag. The red flag (actually a board with reflectors placed in the middle of the track and which was previously stolen from a track gang) was placed without authority by the Carrier. There was also a bent switch target indicating a switch lined against Claimant's train. The record sufficiently indicates that the red flag and bent switch target were placed in that location by "coyotes" in an effort to force Claimant to stop his

train so that illegal aliens on board could get off.

Claimant was proceeding at 45 miles per hour when he noticed the red flag. Claimant placed the train in emergency stop, but proceeded past the red flag. Claimant also stated that he was injured when the slack ran in during the emergency stop.

The dispatcher was contacted and he disavowed any knowledge of a requirement for a red flag. Tr. 46, 51-52. After a special agent came to the scene (and illegal aliens were apprehended from and around the train), the special agent informed the crew that the area was clear. Tr. 88, 91. Claimant then departed without specific permission from the dispatcher.

Claimant received a 60 day suspension for leaving a red flag without proper authority.

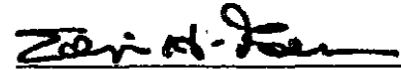
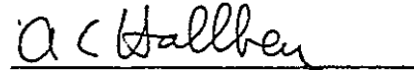
Substantial evidence does not support the Carrier's action. The red flag was stolen and was placed

without Carrier's direction apparently by individuals seeking to force Claimant to stop his train. Claimant was advised by the special agent that the area was cleared. Indeed, the record shows that the dispatcher called Claimant several times asking him when he estimated he would depart to Kingsville. Tr. 55. Under the unique circumstances of this case — particularly where the red flag was placed without the Carrier's authority by individuals apparently seeking to force Claimant to stop his train and the special agent informed Claimant the area was clear and the dispatcher was inquiring when Claimant would reach his destination — we cannot find that Claimant violated any rule concerning a red flag by proceeding without first seeking authorization from the dispatcher.

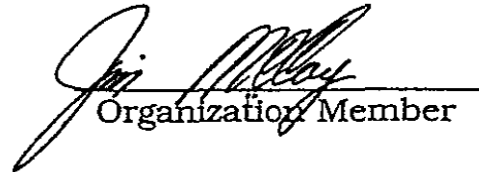
The discipline shall be rescinded, Claimant's record shall be cleared and Claimant shall be made whole.

**AWARD**

Claim sustained.

Edwin H. Benn  
Neutral Member

Carrier Member



Organization Member

Fort Worth, Texas

Dated: May 24, 1999