



## 2. Operational Test.

An operational test is a planned procedure, conducted by one or more officers, to evaluate compliance with rules and instructions, without the employee's knowledge.

This type of test may involve factors such as the burning of fuses or the placement of torpedoes to bring certain Operating Rules into effect. Where signals are involved, testing officers must comply with FRA "Rules, Standards and Instructions for Railroad Signal Systems." Officers qualified to use shunt cables or appropriate Signal Department personnel, at the direction of the testing officer(s), will actuate signal apparatus for rules to be tested. Operational testing is not intended to entrap an employee into making an error, but is used to measure proficiency and isolate areas of non-compliance for corrective action. (Emphasis added)

As the train came around the curve the conductor saw the device and the Claimant put the train in emergency. However, the train hit the device, going a truck length beyond the stop point. The time table speed for the location of the test is 10 mph. The radar gun clocked the train at 8.2 mph.

The Carrier argues that the crew violated Rule 93 when it failed short of the obstruction. The Claimant testified because of the curvature of the track the locomotive headlight was illuminating the town. The Claimant testified to not seeing the obstruction till after it was hit. The Carrier argues vigorously that the train's failure to stop was the same as being involved in a collision. However, there was no testimony as to what the Claimant should have done to avoid hitting the obstruction.

Subsequent to this incident the Carrier eliminated some of the curvature in the track, and changed the obstruction device to simulate an end of train device.

The Organization argues the Claimant was improperly withheld from service pending the investigation, that the Carrier officials entrapped the crew and discipline was not warranted.

At the time of the incident Claimant had 27 years of service without any previous disciplinary action on his record. The position of the Organization is well taken. It is obvious from the

record that the Claimant was entrapped and does not warrant discipline. If the Claimant had in fact violated a rule during the test, the Carrier's own instructions say the employee should be instructed on what corrective action should be taken to improve performance.

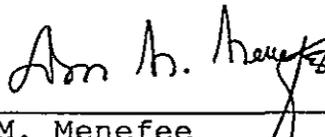
The Carrier was arbitrary and unduly harsh in this case. It was a gross miscarriage of industrial justice.

AWARD

Claim sustained. Carrier is ordered to comply with this Award within 30 days of its date.

  
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R. G. Richter, Chairman  
Neutral Member

  
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L. F. Kell, Jr.  
Carrier Member

  
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D. M. Menefee  
Employee Member

Dated 7/8/98