

PUBLIC LAW BOARD NO. 6040

AWARD NO. 67
NMB CASE NO. 67
UNION CASE NO. L. R. Hallstrom
COMPANY CASE NO. 1136260

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
(Eastern District)

STATEMENT OF CLAIM: Claim of Engineer L. R. Hallstrom of Omaha, Nebraska for all pay for all time lost and all entries of this discipline (UPGRADE Level 4) to be removed from his personal record. Please refer to your file No. II 36260.

OPINION OF BOARD: On May 4, 1998 Engineer L. R. Hallstrom ("Claimant") was working as an Engineer in Through Freight Service between Council Bluffs, Iowa (home terminal) and North Platte, Nebraska (far terminal) on the MCGB1-01. Carrier alleges that Claimant operated his train past a red absolute signal at approximately 0940 hours at approximately MP 6.9, on the Council Bluffs Subdivision. Following an investigative hearing, Carrier found Claimant guilty of violating Rule 2450 and assessed a UPGRADE Level 4 thirty (30) day suspension without pay.

At the hearing held on May 19, 1998, Claimant testified that because the track approaching the signal at CPB 007 is on a curve which partially obstructed his view of the signal, he was approaching the signal with his train brakes set, prepared to stop. According to Claimant, the signal at CPB 007 dropped from yellow to red in his face while he was approaching, prepared to stop with his train brakes set.

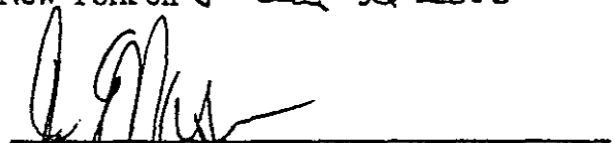
A careful review of the transcribed hearing record shows large gaps, with the notation "Large break in tape before coming back on record". It is worth noting that these gaps appear following a recess (transcript page 22) and the changing of the recorder tape (page 39); but it is not possible to determine whether these gaps were caused by mechanical problems or human error. In any event, the Organization correctly points out that the record is inadequate to sustain the serious charge against Claimant or to enable the Organization to mount a proper appeal on the merits. On balance, the claim must be sustained because carrier failed to carry its burden of proof on this inadequate record.

AWARD

- 1) Claim sustained.
- 2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.



Dana Edward Eischen, Chairman
Dated at Spencer, New York on June 30, 2000


Union Member
Company Member