

PUBLIC LAW BOARD NO. 6040

AWARD NO. 8
NMB CASE NO. 8
UNION CASE NO. Walter
COMPANY CASE NO. 9401865

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
(Eastern District)

STATEMENT OF CLAIM: Claim of Engineer M. J. Walter of North Platte Nebraska for pay for all time lost and all entries of this discipline (UPGRADE Level 2) to be removed from his personal record.

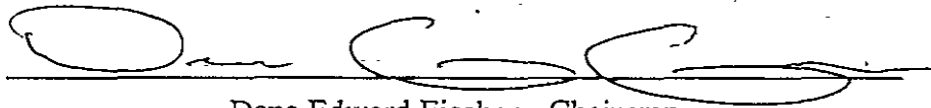
OPINION OF BOARD: Engineer M. J. Walter was working as an Engineer in Through Freight Service between Marysville, KS (far terminal) and North Platte, NE (home terminal) of the KSNP-07, a westbound train, on February 8, 1995. He was charged by Carrier with running through the west leg of the wye switch at Level, NE, which a Hastings Zone Local had left lined against him. Claimant declined to sign the a Form 2 accepting Upgrade discipline and waiving a hearing, thus preserving his right to a hearing into the matter. The incident under investigation occurred February 8, 1995 and the Form 2 waiver period expired February 24, 1995, yet Carrier waited until March 20, 1995, to send out a Notice of Investigation for a hearing on March 24, 1995 (subsequently postponed until April 4, 1995, at the request of the Organization representing the Conductor, who was also charged for the alleged infraction on February 8, 1995).

Despite formal protest by Claimant's representative at the commencement of the hearing pointing out the lack of timeliness of the Notice of Investigation date forty (40) days after the occurrence or incident, the Hearing Officer proceeded to conduct an investigation which Carrier used

to find Claimant guilty. However, the fatal lack of timeliness in the Notice of Investigation renders the investigative record *void an initio* and requires that we sustain the claim without expressing or implying any opinion regarding the underlying charges.

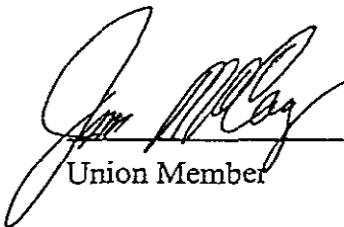
AWARD

- 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 January 14, 1999


Union Member
Company Member