NOV 20 1998
AA = 98051

PUBLIC LAW BOARD NO. 6155

Case No. 1
Carrier File No. 9204197
Organization File No. ~~10152A~~ 12172A
NMB Code 106
Claimant: Engineer K. W. Sibley

PARTIES TO THE DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

AND

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

The Organization appeals the 30-day deferred suspension of Engineer K. W. Sibley and requests the discipline be expunged from the personal record of Claimant and he be paid for all time lost.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated May 19, 1989, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

By certified letter dated September 22, 1992, the Claimant was notified to report to the Office of the Manager of Train Operations, Milford, Utah, on Wednesday, September 23, 1992, at 9:00 a.m. for a formal investigation. The purpose of the hearing was to determine the Claimant's responsibility, if any, for failing to stop his train immediately when warned by Hot Box Detector to stop for possible exception. His failure, if proven, would be a violation of General Rules A, B, D, and E and Operating Rules 106-1, 108 and 109A, as contained in the General Code of Operating Rules. The alleged occurrence happened on September 18, 1992 when the Claimant served as Engineer on the CDAMA-17. The location was approximately at MP 388.25, and happened around 2:45 p.m. MDT at Moapa, Nevada. The hearing was postponed twice and was held on Monday, October 5, 1992.

On the day of the incident, the crew was traveling Westbound

with its train near Moapa, Nevada. The train was a coal train (Train CDAMA-17). When they were passing over MP 388.25, the crew received a high reading from a detector. The high reading forewarned the crew that they were to bring their train to a normal stop. Thereafter, the Conductor is to disembark and inspect the car which caused the indication. Once the Conductor finds the defect, he is to report it to the Dispatcher and set the car out at the next station.

The pulse tapes removed from the engine subsequent to the incident, showed that the train was stopped using the dynamic brakes. The Conductor told the Claimant not to set air which would have brought the train to a stop more quickly. The Conductor testified that in his experience, the use of the train brakes would have caused the journal on the axle to twist off faster and he feared the derailment in that case would have occurred on the main track. After the train was brought to its initial stop, it started moving again up to what appears to be a speed of 5-6 MPH. The Conductor testified that he was walking the train into the siding at Moapa when he realized the defective car had derailed. At that point, the pulse tape indications were and the Conductor's testimony was, that he told the Claimant to "plug it" and the train was put into emergency.

CARRIER'S POSITION

The Carrier argues that the Claimant violated Carrier rules when he failed to stop his train immediately when he received the warning from the "hot box". They contend the train could have been stopped much faster had the Claimant used dynamic brake along with the train brakes. They say his failure to do so was a violation of the rules.

The Carrier also asserts that the Claimant's discipline history justified the 30-day deferred suspension.

ORGANIZATION'S POSITION

The Organization claims the Carrier erred procedurally when they did not send out the first notice of hearing in a timely manner. They argue that the Claimant never received the notice of hearing before he received the notice to postpone.

On the merits, the Organization argues that the Claimant was told not to use the train brakes by the Conductor and adds that there was no reason to overrule the Conductor's direction because he felt they were stopping the train in the safest manner. They point out that it has been the experience of engineers and conductors on the railroad that if you use dynamic braking along with the train brakes, it accelerates the twisting off of the axle. The Organization further argues that the crew reacted immediately to the "hot box" warning and handled the train in what they deemed to be the safest manner possible.

DECISION

In reviewing the actions of the Claimant, the Board finds that he complied with the instructions of the Conductor. The Claimant could cite no reason why he should have overruled the Conductor. Furthermore, both men believed they were in compliance with the rule in as much as they were stopping their train in the safest manner based on their experience and judgement. The Carrier established that the Crew could have stopped the train faster using the air along with the dynamic brake. However, what is not clear is whether the axle would have twisted off faster if the Crew had used the air or whether their failure to use the air, slowing down gradually, was more damaging. Without proof one way or the other, this Board has to find that the Crew was technically in violation of the rule. However, we find the penalty issued excessive.

AWARD

The 30-day deferred suspension is to be reduced to a 10-day deferred suspension.

Carol J. Zamperini
Chairman and Neutral Member

This 30th day of October, 1998.
Denver, Colorado