

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6198**

**JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
A. C. HALBERG, CARRIER MEMBER
D. E. THOMPSON, ORGANIZATION MEMBER**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
SLSW, GENERAL COMMITTEE**

and

**UNION PACIFIC RAILROAD COMPANY
(FORMER ST. LOUIS SOUTHWESTERN RY. CO.)**

**Award No. 1
Case No. 1**

*Date of Hearing - March 31, 1999
Date of Award May 24, 1999*

Statement of Claim:

Claim of Engineer C. W. Milroy, Jr., to expunge from personal record discipline letter of March 5, 1998, and to be paid for all time lost resulting from investigation and suspension.

FINDINGS:

Public Law Board No. 6198, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

The herein Claimant, Engineer C. W. Milroy, Jr., a 32-year employee, with an incident free record, was operating a train on February 16, 1998, between Pine Bluff, Arkansas and Longview, Texas, when the train stalled on a hill near Texarkana, Arkansas, due to insufficient power. Claimant, making his first trip over this line in over five years, and his Conductor, making his first pay trip ever over the line, at the direction of the Dispatcher cut the train, taking the head-end portion to Texarkana for a set out on the main line in the yard. This required several yarding moves in order to go back and couple onto the remainder of the train.

At 8:30 p.m., now in a rainstorm, while moving eastbound, with the Conductor on the east-end (rear) unit, directing the movement, and the Engineer on the west-end (lead) unit operating the consist, the crew encountered a red signal at MP 414.2. (They had passed this signal twice previously.) The Conductor asked the Engineer if the signal was an absolute or an intermediate signal, to which the Engineer replied, "intermediate." The locomotive consist stopped for the signal, whistled off, then started up again and proceeded past the signal to pick up the rear portion of their train.

Claimant was cited for an investigation for operating his locomotives past an absolute signal without permission from a Train Dispatcher. Following that investigation, which was held on February 24, 1998, Claimant was notified on March 5, 1998, that he was being disciplined with a Level 4, 30-days suspension, and that his Locomotive Engineer Certification was revoked for one month.

The discipline assessed was appealed on a variety of grounds, but mainly that the run-by should be mitigated because the Conductor had not been afforded proper familiarization over the territory, that there was no logical reason for the eastbound signal at MP 414.2 to be an absolute ("holdout") signal, previously when Claimant worked this line the signal was an intermediate signal, the signal was on the off-side of the locomotive, hard to see because it was raining at the time, the windshield wipers were bad order, and the Conductor could not see the missing number plate. The appeal also noted that Carrier, in its haste to solve operating problems made decisions which put the employees at risk, and it must accept some responsibility for this non-flagrant violation.

Carrier responds that there exist no procedural violations that would warrant voiding the discipline, that it was established with credible evidence that Claimant did indeed run past an absolute signal without permission, and that the discipline was commensurate with the seriousness of the offense, and consistent with its published discipline policy.

The Board notes that no material facts are disputed in this record. Claimant, did indeed operate his locomotive consist past an absolute red signal without proper authority from Carrier's Train Dispatcher, in violation of well published and understood operating rules. The Board, however, agrees with the Organization that the violation was non-flagrant and occurred in odd, to say the least, circumstances. Particularly bothersome is that the locomotive consist was being operated under the direction of the Conductor, who was in the east unit. The Conductor advised the Engineer of the red indication of the signal, and then asked if it was an absolute or intermediate signal. The Conductor did not advise Claimant that he did not see a number board on the signal. Claimant answered that it was an intermediate signal. The Conductor should have told the Engineer that he could not see a number board on the signal. Had the Engineer had this information, it must be assumed, based on his long incident free service, that he would not have treated the signal as an intermediate signal, and would, instead, have treated it as an absolute signal, and would have acted accordingly.

The Board acknowledges that running a red signal is a serious matter, and had ought not be treated lightly. However, the circumstances here scream for mitigation. Discipline is supposed to be corrective. An actual thirty day suspension is excessive and punitive, in the circumstances abounding in this matter. Accordingly, we will order that the suspension be converted to a thirty day overhead suspension, and if Claimant had no other discipline during the first six months following his return from serving the suspension, he

shall be made whole for all wage and benefit losses incurred while serving the suspension. And, if Claimant works incident free, without any additional discipline, for twenty-four months following his return from the suspension, all reference to the suspension shall be deleted from his service record.

A W A R D

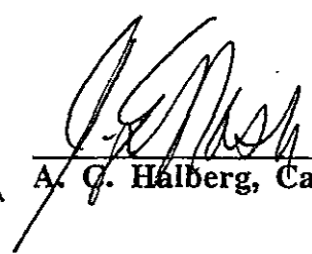
Claim sustained, as indicated above.

O R D E R

The Board concludes that an award favorable to Claimant will be made. Carrier is directed to comply with this award, and make any payments that may be required within sixty days of the date indicated below.



John C. Fletcher, Chairman & Neutral Member

 5-31-99
for _____
A. C. Halberg, Carrier Member



D. E. Thompson, Organization Member

Dated at Mt. Prospect, Illinois., May 24, 1999