

PUBLIC LAW BOARD 6208

Case No. 8
Award No. 8
Carrier File No. 1017448
Organization File No. NFR
NMB code 106
Claimant Conductor L. W. Stauffer

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION

AND

UNION PACIFIC RAILROAD COMPANY.

Statement of Claim:

Claim is made in behalf of UPRR Conductor Larry W. Stauffer for removal of Level 4 Upgrade Discipline, and payment for any time lost as a result of formal investigation which was held in Salt Lake City on May 25, 1996.

Findings

Upon the whole record and all the evidence, the Boards finds that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction of the Parties and over the subject matter and the Parties were given due notice of the hearing held.

On June 6, 1969, the Claimant became an employee of the Western Pacific Railroad. He was promoted to Conductor on March 13, 1972. On May 15, 1996, the Claimant, along with Engineer Donna M. Domingo were assigned to Train STMET-14 which was scheduled eastward from Elko, Nevada to Salt Lake City, Utah. The Engineer had been initially employed as a Brakeman on August 15, 1994 and was promoted to Engineer on January 1, 1995. At the time of the incident, the Engineer was taking her first trip since returning from a 5 month maternity leave of absence. She was generally unfamiliar with the route. It was a dark and rainy evening.

On this night, an efficiency team was conducting tests on the route traveled by Train STMET-14. At MP 783.6 they placed the signal in a stop position. At MP 784.10 to the right of the track a red light was displayed. This light was placed at a curve on or at the end of a 1% descending grade. The area was a canyon and the tracks through the

area consisted of three consecutive curves. In addition, about 1/2 mile east of the area was a "flange oiler", a device to lubricate locomotive wheels and tracks to reduce friction.

The crew stopped the train short of MP 783.6 and received authority from the Dispatcher to proceed past the red signal. Concurrently, it began to rain hard. The crew expected and was looking for the next signal which they expected to be red. As the crew came down the descending grade and rounded a right hand curve, they saw the headlights of the efficiency team's pickup truck, shortly thereafter the Claimant saw the red light and yelled to the Engineer, "there it is, there it is". The Engineer placed the train into emergency, but, failed to stop short of the red light, passing it by about 72". The red light used was approximately 9" tall and the lens about 2 1/2 inches by 2 3/4 inches in size.

The efficiency team removed the crew and they were subjected to a drug screen test which was negative.

By letter dated May 16, 1996, the Claimant was advised to appear at a formal investigation at the Office of the Manager of Train Operations, Salt Lake City, Utah, at 1:00 p.m. The purpose of the hearing was to determine his responsibility, if any, in train STMET-14 failing to stop short of the red light on May 15, 1996 at approximately 8:41 p.m. The rule at issue which was cited in the Carrier's submission reads as follows:

6.27 Movement at Restricted Speed

When a train or engine is required to move at restricted speed, movement must be made at a speed that allows stopping within half the range of vision short of:

Train
Engine
Railroad car
Men or equipment fouling the track
Stop signal
Or
Derail or switch lined improperly

The crew must keep a lookout for broken rail and not exceed 20 MPH.

Comply with these requirements until the leading wheels reach a point where movement at restricted speed is no longer required.

After reviewing the transcript of the hearing, the Carrier determined the Claimant was culpable in the incident. By letter dated May 31, 1996, the Claimant was advised of

the Carrier's decision and assessed a Level 4 Discipline under the Upgrade Policy which was a 30-day suspension without pay.

CARRIER'S POSITION

The Carrier argues that the Claimant was afforded a fair and impartial formal investigation. They say he was well aware of the charges against him, especially since he was removed from service and required to submit to a drug screen test. The Carrier asserts the Claimant was properly notified of the time and place of the hearing.

As to the merits, the Carrier believes the evidence presented established that the train failed to stop short of the red light. The Carrier argues that the Claimant knew he had an inexperienced engineer and should have taken the care necessary to assure that she was operating the train at a speed which would have allowed them to stop short of the red light. They insist that he was familiar with the territory and experienced enough to realize the train was going too fast under the circumstances. They contend he had an obligation to be sure the speed they were traveling would allow them to stop short, particularly under the conditions which existed at the time. They say the fact the train had to go into emergency in an attempt to stop short of the red light, indicates the Claimant's failure to maintain the train at the proper restricted speed.

ORGANIZATION'S POSITION

The Organization insists the Carrier violated the procedural requirements of properly notifying the Claimant of the specific charges. They submit, that even though these errors may not be attributable to the Labor Relations Department and fall on the shoulders of the operating department, they are serious enough to warrant setting aside the discipline on this basis alone. The Organization holds that the operating department insists on taking short cuts which are a direct violation of the Collective Bargaining Agreement.

As to the merits, the Organization contends the efficiency team set up the test in a manner to assure failure. They argue that the terrain, the weather conditions and the lack of experience of the Engineer almost assured that the crew could not pass the test. They say the efficiency team failed to comply with the guidelines for efficiency testing, especially that section which reads:

... Test must be conducted in a fair and impartial manner, keeping in mind that one of the greatest benefits is the educational value. Rules must be enforced in a firm, fair and consistent manner, without regard to personalities and emotions. If it becomes necessary to correct or counsel an employee because it is apparent that a rule has been violated, instruction and counseling should be given in a firm, courteous manner as soon as practicable while the circumstances are still fresh in everyone's minds. . . .

The Organization believes that given the circumstances the Claimant could not have done anything differently which would have assured that train would stop short of the red light. They also believe that the efficiency team knew the Engineer had recently returned from maternity leave and was unfamiliar with the area. The Organization submits that the team intentionally set up a test that was deceptive and bogus.

DECISION

The Board has reviewed the facts in question thoroughly. There is no doubt that efficiency tests are a necessary part of the operations of any railroad. It is important to provide continuous training so that engineers and conductors do not become complacent. However, such tests should be conducted in a manner to assure that the tests are set up to replicate, as much as possible, real situations as they are likely to occur.

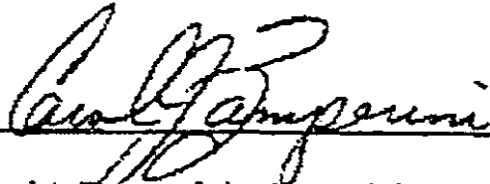
It seems to this Board that the test, as set up, was stretching the limits of efficiency testing. To say the test was rigid is an understatement. Particularly when you consider the placement of the light, the size of the light, the weather conditions, the fact that the pickup truck was facing the oncoming train with its lights on (on the opposite side of the track from the light placement) and the fact there was from all indications no sand in the train (at least there was unrefuted testimony that there was no sand) and there were a series of curves on a 1% grade.

True the engineer failed to stop short of the red light, but, she did not pass it by much considering the challenging conditions. The question is whether the Claimant had reason to believe they were not proceeding safely and within a speed which would allow them to stop short. The Board believes it was reasonable for him to believe the engineer did have control of the train and could have stopped short of the obstacle. Furthermore, the purpose of efficiency testing is presumably to test the efficiency of the crew. When a test is set up that only exposes one crew member to the test, it seems to this Board to defeat part of the reason for efficiency testing. In this case, the Engineer testified that she never saw the light and none of the Carrier witnesses testified that she should have seen the light. They simply had not checked the locomotive to ascertain what she could see.

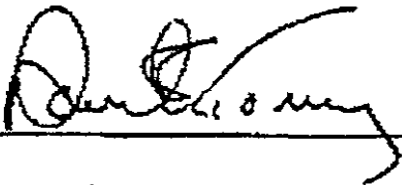
Its true the Claimant was more experienced, but, the evidence does not show that he in any way failed to provide guidance to the Engineer. She found no fault with his assistance and he found no fault with her operation of the locomotive. In addition, there was no testimony to refute the claims made by both the Engineer and the Claimant that the train was in danger of stalling as it descending the grade and rounded the curves.

AWARD

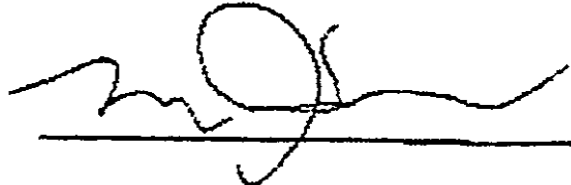
The claim is sustained.



Carol J. Zamperini, Impartial Neutral



Daniel E. Torrey, Carrier Member



Norman J. Lucas, Employee Member

Submitted this 30th day of June, 1999.