

AWARD No. 2333
NMB CASE No. 2333
UNION CASE No. E-27713-32-21(g)
COMPANY CASE No.

SPECIAL ADJUSTMENT BOARD NO. 180

PARTIES TO THE DISPUTE:

UNION PACIFIC TRANSPORTATION CO.
(WESTERN LINES)
(Formerly Southern Pacific Transportation Company)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

Claim of Sparks District Engineer F. H. Meyers for compensation for all time lost including time lost while attending the investigation, and productivity credits, in connection with Claimant's assessment of twenty-one (21) day suspension, from September 19, 1996 through and including, October 9, 1996. Further, Claimant's annual vacation rights should be restored, and he should be compensated accordingly. In addition, Claimant's personal record should be completely expunged of any notation or record pertaining to this case.

OPINION OF THE BOARD: Engineer F. H. Meyers (hereinafter referred to as "Claimant") a Union Pacific Railroad Company (hereinafter referred to as "Carrier") was assigned to pool freight service working between Windell and Carlin, Nevada on Train 1EUCHQ 17 on August 20, 1996. After the hot box scanner at MP 456.0 gave an audible signal, Claimant stopped the train and did not proceed until Conductor Flint completed an inspection and reported that "everything was fine". When it later developed that the journal burned out on the suspect axle, Claimant was charged by Carrier with violation of "Rule 6.29.1 Inspecting Passing Trains; that part reading ... Trackside Warning Detectors and Inspections as contained in the Safety and General Rules for All Employees,

Effective April 10, 1994, of the Southern Pacific Lines, and Item 13.1 General Instructions Union Pacific Railroad System Timetable No. 2, System Special instructions, Item 13.1, effective October 29, 1995". Following a formal investigation, Carrier found Claimant culpable of the charges and imposed a 45 day suspension (this case pre-dates application of UPGRADE on this territory). That suspension was reduced from forty-five (45) days to twenty-one (21) days under letter dated September 23, 1996 and this claim seeks expungement of the discipline and make-whole damages.

Close examination of the record shows that Carrier failed to prove Claimant's culpability. Claimant stopped his train promptly, waited while the Conductor alighted and made an inspection and started moving again only after the Conductor gave him a signal to proceed and confirmed that "everything looks fine" This case is squarely on all fours with the matter decided by PLB 4878, Award 9, NMB Case No. 9, in a sustaining award which states in pertinent part:


[Cases which hold that contributory negligence by others does not entirely excuse an employees carelessness] are readily distinguishable from the present matter because here there is not one iota of evidence to show Claimant was at fault. He stopped his train immediately upon learning of the hot box report, waited for the Brakeman to complete his inspection, and justifiably relied upon the Brakeman's assurances that everything was alright. Whether the Brakeman behaved correctly is not for us to decide; but we do hold that Carrier's attempt to discipline this Claimant on the basis of 'guilt by association' was improper and must be set aside.

AWARD

Claim sustained.


Dana Edward Eischen, Chairman


Union Member


Company Member