

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

STATEMENT OF CLAIM:

"Request the Level 4 to be removed from the record of Conductor E. S. Cullen, and paid for the time lost, including vacation credits."

FINDINGS:

On February 18, 2004, at 9:00 A.M., Conductor Cullen reported for duty on job VTLU65-18. Shortly, thereafter, he received work orders indicating there were 10 cars to be delivered to the Sand Springs Railroad. Conductor Cullen testified that he contacted Superintendent Jessie Cranford of the Sand Springs Railroad and reached mutual agreement those cars would not be delivered on that date. Based on the conversation with Superintendent Cranford, Conductor Cullen failed to deliver the 10 cars as directed by work order.

Later that day, MYO Mr. M. Reed received advice that Conductor Cullen had failed to deliver 10 cars as indicated on work order and had failed to notify Carrier officer that delivery had not been made.

On February 24, 2004, Carrier mailed certified letter directing Conductor Cullen to *"Report to the Union Pacific Railroad Yard Office, 5401 South 108 East Avenue, Tulsa, Oklahoma at 1000 hours, Tuesday, March 2nd, 2004, for a formal investigation. This investigation is to develop the facts and determine your individual responsibility, if any, in connection with the report that you allegedly failed to comply with verbal and written instructions while employed as crew member on Job YTU55-18 on February 18th, 2004. This report indicates a possible violation of Union Pacific General Code of Operating Rules effective April 2nd, 2000.*

After mutually agreed upon postponement, investigation was held on March 16, 2004. After reviewing the transcript, Carrier found Conductor Cullen responsible for violating GCOR 1.13 – Reporting and Complying with Instructions. Upon a finding of responsibility, he was assessed Level 4 discipline.

Discipline was appealed and denied in accordance with agreement. Partisan parties have been unable to resolve this dispute on property, and it comes, now, before this Board for final and binding adjudication.

During formal investigation, Carrier witness, MYO Mr. M. Reed, testified that just two weeks prior to incident of February 18, 2004, he had discussed the requirement to make daily deliveries to all Short Line Carriers; and in the event the occasion arose where a delivery would not be made, he directed Conductor Cullen to, so, advise either him or some other Carrier Officer before making the decision to forego delivery. Carrier witness, further, testified that Conductor Cullen had not provided such advice.

Organization argued that earlier conversation between Conductor Cullen and MYO Reed had to do with the Tulsa Sapulpa Union Railroad, only, and did not include all Short Line Carriers. But, in any event, Organization contended, Conductor Cullen had contacted the Superintendent of the Short Line Carrier involved and had reached mutual agreement that delivery could be disregarded for February 18, 2004.

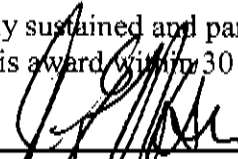
OPINION OF THE BOARD:

We have studied the entire written record and considered oral arguments presented by both parties. While we believe Carrier did, in fact, issue verbal instructions to make daily deliveries to all Short Line Carriers, the record indicates those instructions were issued during a conversation involving a particular Short Line Carrier and could easily have been misunderstood.


Carrier must share the blame for failure to comply with instructions when instructions are unclear. For that reason, the Board believes penalty exacted was too harsh, and we exercise our prerogative to reduce it from Level 4 to Level 1.

AWARD:

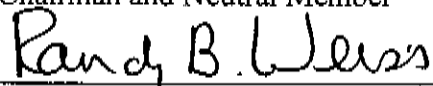
Claim is partially sustained and partially denied per findings, above. Carrier is directed to implement this award within 30 days of execution by majority Board.



J. E. (Jim) Nash – Arbitrator, Chairman and Neutral Member



Employee Member, Mr. Lee Pruitt
Brotherhood of Locomotive Engineers &
Trainmen



Carrier Member, Mr. Randy Weiss
Union Pacific Railroad Company

May 16, 2005