

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

STATEMENT OF CLAIM:

"Request the removal of the level 2 discipline from the record of engineer R. R. Royer with him being made whole, which includes but not limited to lost earnings, all vacation rights, cobra payments and any other penalties associated with this discipline."

FINDINGS:

On August 10, 2004, Engineer R. R. Royer was a crew member called to protect Job #LLM41-10. MTO C. N. Schalatre met crew in locker room, provided a map of gas rack in Krotz Springs and issued instructions to head into the siding at Krotz Springs, hold on to the engines and five cars and work the gas rack. Crew was, also, instructed to pick up empty tank cars at Port Barre – if they could find them, not to worry about them, but was told not to worry if unable to locate – and deliver them to the plant at Krotz Springs.

On August 13, 2004, Carrier issued letter of notification to Engineer R. R. Royer, advising *"You are hereby instructed to report to the conference room, 550 Lindberg Street, Beaumont, TX on August 23, 2004, at 1:00 p.m. for a formal investigation to develop the facts and determine individual responsibility, if any, in connection with allegedly failing to comply with MTO's instructions regarding working the gas rack at Krotz Springs, LA on August 10, 2004 at approximately 1600 hrs."*

Formal investigation was postponed by mutual agreement and convened on November 8, 2004. After reading transcript of investigation, Carrier found Engineer Royer responsible for failure to follow MTO Schalatre's instructions regarding working the gas rack at Krotz Springs, LA. Upon a finding of responsibility, Engineer Royer was assessed discipline at Level 2.

Discipline was appealed and denied in accordance with labor 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 argued Engineer Royer did not comply with instructions when crew failed to pick up empty tank cars at Port Barre and deliver them to

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Krotz Springs. However, under cross examination from Organization, charging officer conceded instructions were contingent upon crew's ability to locate empty tank cars, and that crew was informed not to worry about the empties. Charging officer, further, acknowledged Conductor advised him this would be his first trip, and he was totally unfamiliar with the area.

Evidence of record further developed that crew was not advised either of car numbers or location of empty tank cars.

Charging officer, finally, accepted that allegations based on crew's failure to pick up empty tank cars were unfounded, and agreed not to pursue. He continued to insist, however, that crew failed to pull into siding, as instructed; as a consequence crossing was blocked, resulting in numerous complaints, and damaged public relations.

Organization protested that allegation on blocking a crossing had not been made in letter of notification and could not be tacked on during the formal investigation. And, regarding crew's failure to pull into siding, crew maintained it, simply, followed instructions issued by Dispatcher, and would certainly have been disciplined for failure to do so.

OPINION OF THE BOARD:

Based on what we've been able to glean from the record, Carrier alleged failure to pick up empties without having provided crew either with their location or car numbers, and, cars were not shown on work order.

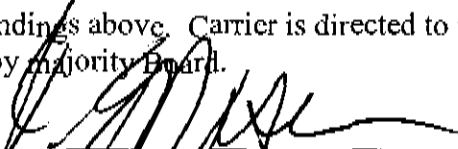
During formal investigation, Carrier alleged crew blocked crossing - activating crossing gates and precipitating complaints from the general public, but Carrier failed to provide witnesses who could verify crossing was, in fact, blocked, and, failed to provide witnesses from Signal Department to rebut Organization's claim that crossing gates malfunctioned. But, more importantly, Carrier did not include "blocked crossing" in its letter of notification. It cannot charge Engineer Royer with one violation and find him responsible for another.

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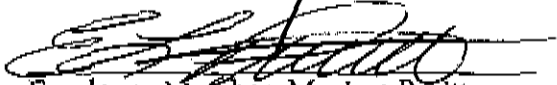
The dim illusion of merit to Carrier's allegations very quickly faded without the illumination of probative evidence. In our view, Carrier failed to make its case, and discipline must be removed from Engineer Royer's personal record.

AWARD:

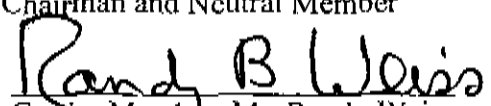
Claim sustained per findings above. Carrier is directed to implement this award within 30 days of execution by majority Board.



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

July 27, 2005
