

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

STATEMENT OF CLAIM:

"Request the removal of level 3 discipline from the record of engineer J. A. Flores 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 1, 2004, Engineer Flores was assigned to the LAQ02-1 Switcher. While taking instructions during a switch move, the radio malfunctioned; because of loss of communication, Engineer Flores did not hear complete instructions.

On August 9, 2004, Carrier mailed Engineer Flores a letter of notification, advising:

"Report to the Yard Office Conference Room at 600 East 611 Street, Brownville, TX on Thursday, August 19, 2004 at 1000 hours for a hearing and formal investigation to develop the facts and place your individual responsibility, if any, in connection with a report that:

You allegedly failed to stop the movement within half of the distance specified resulting in a rough coupling at approximately 2300 hours on 1-august-2004 while working as crew members on the LAQ02-01."

Formal investigation was postponed by mutual agreement and convened on December 2, 2004. After reading transcript of investigation, Carrier found Engineer Flores responsible for violation of GCOR 5.3.7 - Radio Response. GCOR 5.3.7 reads:

"When radio communication is used to make movements, crew members must respond to specific instructions given for each movement. In addition:

Radio communications for backing and shoving movements must specify the direction and distance and must be acknowledged when distance specified is more than four cars.

Movement must stop within half of the distance specified unless additional instruction received."

Upon a finding of responsibility, Engineer Flores was assessed discipline at Level 3.

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.

Organization argued throughout the investigation that incident was the direct result of a malfunctioning radio.

Carrier took the position that Engineer was required to stop at one half the distance of last car count if no other instructions were received.

It was the Organization's contention that rules clearly stated Engineer could not be held responsible where accident occurred as the result of faulty equipment; to support its position, Organization attempted to introduce into evidence the applicable rule. Hearing Officer denied permission to enter rule into evidence, and Organization promptly raised an objection.

OPINION OF THE BOARD:

Upon reading the whole record and evaluating arguments made by both parties, we are concerned that presiding officer denied Organization permission to enter into the record evidence that may well have been relevant – irrespective of essence. The Board was very interested in learning more about that rule; and we agree that Engineer Flores was denied due process when presiding officer prevented Organization from perfecting its case by introducing relevant evidence.

As we – and other tribunals – have stated in numerous awards, the danger is far greater on the side of keeping out evidence that is germane than in letting in the irrelevant. Obviously, the presiding officer has the right and responsibility to prevent the formal investigation from drifting too far a field; but, here, testimony was given by several witnesses indicating the accident was the result of faulty equipment. Organization's entire case would rise or fall on its ability to introduce exculpatory evidence in the form of a rule that holds the employee blameless where accident is related to faulty equipment.

PLB 6833
CASE NO. 29
AWARD NO. 29

In our view, presiding officer arbitrarily and unnecessarily restricted Organization in presenting evidence and in effectively defending Engineer Flores against allegations of violating GCOR 5.3.7 - Radio Response.

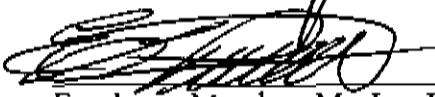
Based on the record Carrier made during the formal investigation, this dispute is resolved in favor of Organization on the basis of fatal procedural error; there is no need to discuss merits.

AWARD:

Claim is sustained per findings above



J. E. (Jim) Dash - 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, 2015