

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY  
AND  
BROTHERHOOD OF LOCOMOTIVE ENGINEER AND TRAINMEN

STATEMENT OF CLAIM:

*"Request the removal of Level 5 discipline – Permanent Dismissal from the record of engineer F. A. Burton – along with his reinstatement without loss of pay or loss of any benefits associated with this discipline."*

FINDINGS:

On May 24, 2005, at approximately 2:30 p.m. on the Lufkin Subdivision, while operating Train LEF27 in the vicinity of milepost 94.70, Engineer F. A. Burton was involved in a rear end collision with Train AASEW-22.

On May 31, 2005, Carrier mailed Engineer F. A. Burton a certified letter, directing:

*"Please report to the Manager Train Operations' Office, 101 Herndon, Lufkin, Texas, on Tuesday, June 7, 2005, at 2:00 P.M., for formal investigation to develop facts and place your responsibility, if any, in connection with your alleged indifference to duty and careless of safety, resulting in a rear end collision with LEF27 and AASEW-22, on May 24, 2005, at approximately 2:30 P.M., on the Lufkin Sub at MP 94.70.*

*Engineer only – Proposed discipline is a Level 5, under the Upgrade Policy. You may contact MOP Gil Stovall at 936-639-6162, for conference purposes.*

*You may arrange for witnesses and representatives, if desired, as permitted by your scheduled agreements.*

*You are being withheld from service pending outcome of formal investigation."*

After mutually agreed upon postponement, Carrier convened formal investigation on July 25, 2005. Carrier read transcript of investigation and found Engineer Burton responsible, as charged. Upon a finding of responsibility, Carrier assessed discipline at Level 5 – Permanent Dismissal.

Discipline was appealed and denied according to 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 introduced into evidence electronic data establishing that prior to collision, Engineer Burton encountered a stop and proceed signal at milepost 96.7 – which required him to proceed at restricted speed – or 20 MPH, until he arrived to next signal. Evidence indicated Engineer operated his train at 33 MPH rather than the required 20 MPH.

As Engineer Burton rounded a curve prior to the next signal – while traveling in excess of maximum allowed speed – he saw Train AASEW-22, stopped on the main track. Engineer Burton applied the brakes, then, threw his train into emergency. He was able to slow his train down to approximately 10 MPH just prior to colliding into the rear of Train AASEW-22.

Although the essential facts of this case are not in dispute, Organization took the position that the incident was not, entirely, the responsibility of Engineer Burton; it may have been avoided had the Dispatcher informed the crew of the presence of another train on the main track.

#### OPINION OF THE BOARD:

After reading the whole record and hearing oral arguments, it was clear that Engineer Burton violated Carrier rules, as charged. And, neither Engineer Burton nor the Organization denied Carrier allegations. The strongest argument Organization was able to muster was that the Dispatcher should share the responsibility for having failed to advise Engineer Burton that another train occupied the main line. The Board believes Engineer Burton should have concluded that was a possibility based on the signal he passed prior to entering the curve.

However, having said that, the Board, also, noted Engineer Burton's tenure and prior discipline record. Engineer Burton was an excellent employee with a good work record and good discipline record for more than 49 years. In meting out discipline, it is proper to consider tenure and prior history. Taking that into account, we believe permanent dismissal is too harsh a penalty.


In this case, the Board will exercise its prerogative to reduce discipline to time already served and direct Carrier to reinstate Engineer Burton without back pay.


PLB 6833  
CASE NO. 72  
AWARD NO. 72

AWARD:

Claim sustained in part and denied in part per findings, above. Carrier is directed to implement this award within thirty (30) days of execution by majority members of this Board.

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

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

  
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Carrier Member, Mr. Randy Weiss  
Union Pacific Railroad Company

Date June 9, 2006