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Award No. 3
Co. File 1173946
Org. File 27975

PUBLIC LAW BOARD NO. 6567

Parties:

Brotherhood of Locomotive Engineers
And
Union Pacific Railroad Co.

Statement of claim:

Claim of Engineer L. R. Carpio (hereinafter claimant) for compensation for all time lost, including time lost attending investigation in connection with claimants assessment of Level 3, which was rendered on February 2, 1999. Further, claimants vacation rights to remain intact. Claimant's personal record to be expunged of any notation of the instant case.

Background:

Claimant entered carrier's service on March 20, 1995 on the Los Angeles district. On the date of this incident, December 22, 1998 claimant was working on Train YWC76 at West Colton, CA. The move being made was to shove car in a westerly direction to clear a road crossing. The move was being controlled by Switchman Colburn on the point under radio communications. During the move Mr. Colburn stated "twenty (20) cars to go which was acknowledged by claimant. However, after traveling approximately seven (7) to eight (8) car lengths Switchman Colburn ordered claimant to stop. Evidence indicates the point of cars had struck a locomotive, which was parked in the vicinity.

Carriers position

Carrier asserts that claimant was responsible for the collision account failing to stop within on half the distance specified via radio from the employee controlling the movement Carrier contends that rule 5.3.7. is specific when operating under radio rules.

Organizations position

Claimant is blameless as the last distance specified was twenty (20) cars and claimant traveled only seven (&) or eight (8) cars. Claimant was unaware that the employee controlling the move did not remain on the point, thereby permitting a so-called blind shove.

Findings:

The meager evidence produced at the hearing in this case cannot be considered sufficient to discipline claimant. Because of varied agreement provisions the crew working with claimant was excused from the hearing therefore, no testimony relative to the incident was forthcoming from participants. The ground crew was encompassed under the Diversion Core Program, thereby accepting responsibility. As a result they were precluded from testifying. It might be said, the claimant was left to hang alone. The Board cannot condone such resultant disparate treatment.

Award:

Claim sustained.



Leonard Foster, Neutral Member of Board

1-22-03

Date