

SPECIAL ADJUSTMENT BOARD NO. 180

PARTIES TO THE DISPUTE:

UNION PACIFIC TRANSPORTATION CO.
(WESTERN LINES)
(Formerly Southern Pacific Transportation Company)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

Claim of Los Angeles District Engineer D. J. Mahony, for compensation for all time lost, including time lost while attending the investigation, in connection with Claimant's assessment of Level 4.5 Upgrade, and 60 day suspension in connection with the decision that was rendered on August 6, 1998. Further, Claimant's annual vacation rights should be restored, and he should be compensated accordingly. In addition, Claimant's personal record should be completely expunged of any notation or record pertaining to this case.

OPINION OF THE BOARD: Engineer D.J. Mahony, ("Claimant"), regularly assigned to helper freight service, home terminal West Colton, California, was called to work a light engine movement (Job 8HWCWC-07) out of West Colton, California on July 7, 1998, to pick up five additional locomotives at Salvia. After departing Salvia with the seven locomotives and stopping at Hinda to allow another train to pass, Claimant was operating on a descending grade and began to pick up speed. Claimant was unable to slow the engines and in a short period of time the speed had increased to 85 mph. At or near Milepost 550.6 (Ordway) the seven locomotives derailed and were severely damaged, but Claimant escaped with minor injuries.

On July 24, 1998, and July 28, 1998 a formal investigation was convened at Bloomington, California to develop the facts in connection with alleged violation of Rules 6.22, "Maintaining Control of Train or Engine", 6.31, "Maximum Authorized Speed", 30.3.2 "Locomotive Consist

Changes”, 30.3.3 “Procedure for Inspection and Test of Locomotive Brakes”, 31.13.2 (A) “Locomotives Equipped for Multiple-Unit Operation”, of the Union Pacific Railroad’s General Code of Operating Rules effective April 10, 1994 and Union Pacific Revised System Special Instruction, effective June 1, 1998. A decision that Claimant was culpable of the charges, and that he was suspended from service was sent under the date of August 6, 1998. An appeal of this suspension, for pay for all time lost, restoration of all employee benefits and expunging of Claimant’s personal record was duly undertaken.

The following facts surrounding the incident are not disputed. On July 7, 1998, Road Freight Engineer Hacker was operating a westbound freight train on an ascending grade near Salvia, California, when he lost control of his five (5) locomotives and 9500 ton freight train. Engineer Hacker’s locomotives had caught fire, the local fire department had been dispatched to assist, and the crew put the fire out. Engineer Hacker had lengthy conversations with the Carrier’s Mechanical Department and therein detailed the problems about the fire and problems with the control circuit breaker on the locomotives, which was the apparent cause of all the locomotives shutting down. This conversation took place over the Carrier’s radio and PBX system, which are all tape recorded.

Engineer Hacker then called the Carrier’s train dispatching office, notified them of the problems and told the dispatcher that he was in the process of securing his train. The dispatcher ordered him to pull the train into the “clear” but before doing so, Engineer Hacker informed the dispatcher that he could not do so because he had no working locomotives and was losing his air. Helper Engineer R.J. Hubbard, who was out ahead of Claimant, was dispatched from West Colton with two (2) locomotives to help Engineer Hacker pull his train into the clear in the siding of Salvia.

Engineer Hacker eventually ran out of time under the Federal Hours of Service Act, at Salvia, and Helper Engineer Hubbard was instructed to “hold the air” until a road relief crew could be called. Engineer Mahoney, the Claimant in this case, was called on duty to relieve Helper Engineer Hubbard. Claimant was deadheaded from Colton to Salvia, where he relieved Helper Engineer Hubbard, and Hubbard was deadheaded back to Colton. Claimant initially was instructed to continue to “hold the air” and wait for the relief road crew and mechanical forces to be dispatched out of West Colton, a distance of some fifty-five (55) miles. Approximately six (6) hours later, however, Claimant was instructed to tie down (secure) the freight train, cut all the locomotives off and then take the disabled power units to the Roundhouse facilities at West Colton, California. He was in the process of doing so when the high-speed derailment occurred because he was unable to control speed on the descending grade outside of Hinda.

At the investigation, the Organization presented colorable evidence suggesting that the primary reason for Claimant’s inability to stop the runaway train was his use of the “MU” cable, a 27 point electrical cable that is placed between a series of locomotives so that they can be operated in multiple as a single consist. The Organization avers that the “MU” cable had not been connected when Engineers Hubbard and Hacker “double headed” the train into the siding and therefore they experienced no “inherited” braking problems from the defective units. But, after Claimant was ordered to take the five defective locomotives from Salvia to the mechanical forces at Colton, he “M/U-ed” the consist; because in handling light engines on the main track all engines are required to be “M/U”, unless they are operated with the dead engine feature cut in.

Thus, it appears that when Claimant plugged in the “MU” cable, he inheriting the root cause of the original failure of Road Engineer Hacker’s locomotives-- a defective control circuit breaker

on the road freight locomotives. On the other hand, the record does show that Claimant failed to perform a proper brake test as outlined in Rule 30.3.3 entitled: Procedure for Inspection and Test of Locomotive Brakes and also failed to communicate with the train dispatcher when he could not properly M/U his locomotive consist and perform the brake test.

Claimant was not without fault in this case, but critical to any proper determination of the full measure of Claimant's culpability is what he knew or should have known about the condition of Engineer Hacker's train, prior to utilizing the "MU" cable in this particular situation. In that connection, prior to the investigative hearing and at the hearing, the Organization repeatedly requested the tape recordings and documentation relating to the fire and mechanical/electrical systems on the five disabled units be provided and that Engineer Hacker be called as a witness. The Hearing Officer denied these requests, both in advance of the hearing and at the first day of investigation. After the General Chairman made a personal appeal to the General Superintendent, however, the Hearing Officer "recanted" those rulings and recessed the hearing until July 28, to afford the Carrier to provide the witness and materials requested by the Organization. When the hearing resumed, however, the Hearing Officer again denied the Organization's request that Engineer Hacker be called as a witness and asserted that none of the requested documentation could be found.

The controlling language of the System Agreement Discipline Rule reads, at Items 7 and 16, as follows:

7. Where request is made sufficiently in advance and it is practicable, the engineer and/or the BLE representative will be allowed to examine material or exhibits to be presented in evidence prior to the investigation. At the investigation, the engineer and/or the BLE representative will be afforded the opportunity to examine or cross examine all witnesses. Such examination will extend to all matters under investigation.

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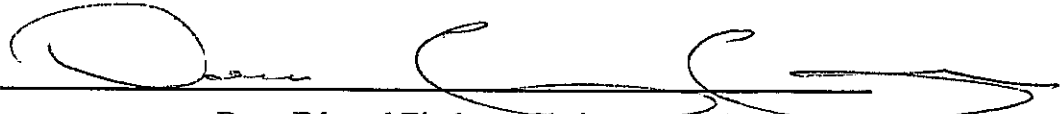
16. The engineer being investigated or the BLE representative may request the Carrier to direct a witness to attend an investigation, provided sufficient advance notice is given as well as a description

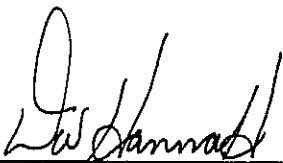
of the testimony the witness would be expected to provide. If the Carrier declines to call the witness and the witness attends at the request of the engineer or BLE and provides relevant testimony which would not otherwise have been in the record, the carrier will compensate the witness as if it had directed the witness to attend.


The demonstrated violation of these Agreement provisions compels this Board to reduce the penalty imposed by Carrier from Level 4.5 (60 day suspension without pay) to Level 4 (30 day suspension without pay) and direct Carrier to reimburse Claimant for the difference.

AWARD

- 1) Claim sustained, in part and denied, in part, as indicated in the Opinion.
- 2) Carrier shall implement this Award within thirty (30) days of its execution by a majority of this Board.


Dana Edward Eischen, Chairman


Union Member


Company Member

3/3/03