

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24419

Docket No. 44091

95-1-93-1-S-6600

The First Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
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(Soo Line Railroad Company

STATEMENT OF CLAIM:

"Engineer D. R. Paddock, Iowa Seniority District requests that he be reimbursed for all time lost when he was assessed a 30-day actual suspension in Discipline Notice dated August 6, 1991.

Engineer Paddock was charged with violation of General Rules A, B and D, Definition of Restricted Speed, Rules 11, 93, 106, 607 and 621 of the General Code of Operating Rules."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right to appearance at hearing thereon.

The "Restricted Speed" rule and Agreement Rule 11, "Unattended Fusee," are germane to this dispute. "Restricted Speed" is defined as:

"A speed that will permit stopping within one half the range of vision short of train, engine, railroad car, stop signal, derail or switch not properly lined, looking out for broken rail, not exceeding 20 MPH."

In pertinent part, Rule 11 states: "A train moving at restricted speed must stop before passing fusee."

On July 16, 1991, Carrier officers were conducting efficiency tests at Camanche, Iowa, between MP 196 and 158. The tests consisted of Trainmasters placing a fusee between the rails of the track upon which Claimant was operating. Claimant was able to stop his train at the location of the first fusee, however, he neglected to stop his train for a second fusee further down the line. Following a disciplinary hearing, Claimant was assessed a 30-day actual suspension for "violation of General Rules A, B, D, 'Definition of Restricted Speed,' Rules 11, 93, 106, 607 and 621 of the General Code of Operating Rules."

In its appeal of the discipline, the Organization did not dispute that Claimant neglected to stop for the second fusee. Claimant conceded that he observed the burning fusee and could "easily" have stopped prior to passing it. Instead, he elected to continue for a "short distance" asserting that he could "clearly see that there was no potential hazard in front of him." According to Claimant "it was more prudent" to pass the fusee rather than block the crossing behind him.

The General Code of Operating Rules was designed to promote a "safe working environment for all employees as well as the general public." Claimant was operating at restricted speed when he entered the yard limits, therefore, he was required to stop before passing the fusee. Claimant readily admitted that he "knew the Rule stated that we should stop at the fusee."

Claimant is obligated to follow appropriate rules, and he exercised poor judgement when he failed to do so. We cannot fault Carrier for rejecting his excuse, especially since, when he finally did stop, he blocked two other crossings. With regard to the quantum of discipline, Carrier pointed to Claimant's personal record which "shows discipline within the past two years for running through switches within yard limits." Under the circumstances, Carrier's assessed discipline cannot be ruled inappropriate or excessive.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 6th day of February 1995.