

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

**Award No. 25110  
Docket No. 44759  
00-1-98-1-U-2046**

The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

**PARTIES TO DISPUTE:** ( **Brotherhood of Locomotive Engineers**  
( **Union Pacific Railroad Company (former Missouri**  
( **Pacific-Upper Lines)**

**STATEMENT OF CLAIM:**

**“Claim of Engineer K. C. Spencer for removal of Level 2 Discipline under the Carrier’s unilaterally imposed “UPGRADE” discipline policy and for reinstatement to service and all lost time associated therewith including time spent at the investigation and with seniority and vacation rights unimpaired.”**

**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 were given due notice of hearing thereon.

Claimant was assessed a Level 2 Discipline as a result of an investigation held on May 9, 1997. Carrier found that Claimant had violated Operating Rule 13.6(b) when the crew failed to notify the Dispatcher that its train had passed a verbal defect detector without acknowledgment from the detector. Rule 13.6(b) reads as follows:

- “b. When a train passes a detector equipped with radio transmitted verbal defect indicator, comply with the following procedure if any of these conditions occur:**
- The crew does not receive verbal information from the detector,**
  - The crew does not understand the verbal information from the detector, or**
  - The detector (including Talk on Defect Only detector) announces “integrity failure.”**

#### **Procedure**

- 1. Immediately reduce train speed to 35 MPH or less.**
- 2. Immediately notify the train dispatcher.**
- 3. If the train dispatcher has access to a remote readout that shows there is no defect, he may allow the train to go at normal speed.**
- 4. The train may go not exceeding 35 MPH if:**
  - It is decided the train will receive a complete roll-by inspection on both sides of the train by qualified employees standing on the ground, or**
  - The train will pass an operable detector within 30 miles.****The train dispatcher may provide this information. Also the crew may establish their own roll-by inspection if they know the location of qualified employees and those employees assure the crew that they will do a roll-by inspection. If the train will receive a roll-by inspection, the crew must know the location where the inspection will be done. Do not exceed 10 MPH during the inspection.”**

**The record in this case indicates that the Claimant was the engineer on train CWBJR-25 on March 27, 1997. The train was on the Coffeyville Subdivision when it went past a verbal track side defect detector. When the last car passed the detector it did not notify the crew that there were no defects. The reason it did not notify the crew was because Carrier officers were conducting an efficiency test and had disconnected the voice responder. After the crew failed to contact the dispatcher immediately, a Carrier officer stopped the train in about a minute and one half. The event tape on the locomotive showed that the train had slowed below the 35 MPH required by the rule. Claimant was cited for not calling the dispatcher.**

The record shows that the crew had “toned” the dispatcher previous to the incident. The Carrier’s communications system provides for a toning system when the dispatcher is busy. When the dispatcher has time the tones are answered in order. Re-toning the dispatcher does not speed up the process, nor will the dispatcher pass up earlier tones. Therefore, it would not serve any purpose for the Claimant to re-tone the dispatcher after the train passed the verbal detector.

The Carrier carries the burden to show that the Claimant violated the rules. While the crew might have been fortunate that it had already “toned” the dispatcher, there was no benefit to re-tone the dispatcher. Claimant had slowed the train. The Carrier has failed to show the rule was violated.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division**

Dated at Chicago, Illinois, this 1st day of March, 2000.