

PUBLIC LAW BOARD NO. 5902

PARTIES) UNITED TRANSPORTATION UNION YARDMASTERS DEPT.
TO)
DISPUTE) NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of Yardmaster Wayne C. Johnson because of formal investigation held October 11, 1995 in Chicago, Illinois. We request the letter of reprimand be removed from Yardmaster Johnson's record and he be paid according to the applicable agreement for attending this investigation as the discipline is arbitrary and capricious. (Organization File: SM-CGO-95-1; Carrier File: SM-CGO-95-1)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The Claimant was administered a letter of reprimand in a Carrier determination that while working as a Yardmaster he was guilty of a "failure to ensure that train crew L99's shove movement on RI Lead, Pullman Junction, was properly protected, resulting in signal #512.2 being passed while displaying a stop indication at about 6:23 p.m., October 2, 1985."

Although not specifically mentioned in the notice of charge or letter of reprimand, in argument to the Board the Carrier maintains that the Claimant had violated Operating Rule GR-3, which reads as follows:

All employees must follow instructions from proper authority, and must perform all duties efficiently and safely.

Study of the record reveals that when the road crew on L99 requested permission from the Claimant to make a shoving movement to the Rock Island Lead at Pullman Junction that the Claimant requested the crew of Yard Job LC24 to protect the movement of L99. The Conductor of Yard Job LC24 communicated with the Conductor of the L99 crew and assured the former that he was protecting the blind end of the shove being made by L99. It appears that the Conductor of Yard Job LC 24 assumed that the crew of L99 was qualified and familiar with the track and signal indications, and that when the crew of

L99 told him that they were ready to shove that the L99 crew had the switches and signal to proceed. However, as testimony of record shows, the switches were lined but the signal was red. Certainly, having communicated with both crews, and the crews, in turn, having communicated with one another, it was not the responsibility of the Claimant to monitor all radio communications or to have kept the move under constant surveillance. As set forth in Award No. 2686 of the Fourth Division, NRAB, Referee Harold Weston: "[A] yardmaster does not guaranty the proper performance of his subordinates' duties and should not be disciplined for their misdeeds unless there is evidence that he himself has been at fault."

That the road crew on L99 was not qualified in the territory in which they were working is unfortunate. However, there is no probative evidence of record to conclude, as the Carrier contends, that it was the Claimant's responsibility to have ascertained such a fact. Rather, it would seem to the Board that it was the responsibility of the L99 crew to have informed the Claimant that they were not qualified or unfamiliar with the track territory. In this respect, it is noteworthy that it was the testimony of the Assistant Trainmaster, upon being asked if, when he put out a call for the crew of L99, whether he had instructed the caller to inquire as to whether the crew was qualified in the area in question, that the Assistant Trainmaster said that he not done so, albeit he said that he usually does issue such an instruction to the caller.

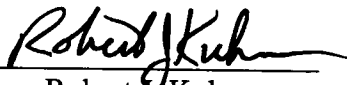
Since the Carrier has failed to adequately demonstrate that the Claimant failed to perform his assigned duties in a proper manner, it is concluded that the Claimant was not guilty of the charge. The Board will therefore direct that the discipline be set aside and that the Claimant be compensated for all time lost.

AWARD:

Claim sustained.



Robert E. Peterson
Chair & Neutral Member



Robert J. Kuhn
Carrier Member



Robert C. Arthur
Organization Member

Norfolk, VA
November 17, 1997