

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25040
Docket No. 44787
99-1-98-1-U-2059

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

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Union Pacific Transportation Company (former CNW)

STATEMENT OF CLAIM:

“Claim in behalf of Engineer A. C. Erickson, SS# 394-26-1753, Union Pacific Railroad former Chicago and North Western Lines for compensation for all lost time including time spent at the investigation, that this incident be removed from claimant’s personal record and he be removed from the Union Pacific Upgrade Policy when he was investigated on the following charge:

“Your responsibility, if any, in connection with your train and engine failing to stop before any part of Train LTS82-02 passed stop signals displayed with a red flag at about M.P. 82.4 on the Eau Claire Subdivision on March 2, 1998.”

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.

At the time of the incident that gave rise to this case (March 2, 1998), Claimant was assigned as an Engineer on LTS82-02, a way freight with one engine and fourteen cars, eleven empties on the head end and three loads on the rear end. Claimant had a red signal at Mile Post 81.8. This signal indicated that Claimant must stop his train short of the signal and proceed at restricted speed to the next signal at Mile Post 82.4 or 5. Carrier officer G. B. Selk, Manager of Operating Practices, was standing on the outside of the curve with a red flag when Claimant's train approached. Officer Selk gave a stop sign with the red flag. Claimant saw the red flag and stop signal and proceeded to apply the air to stop the train. He made a normal stop (he did not put the train in emergency) about three to three and one-half car lengths past the red flag. As a result of passing the red flag, Claimant was cited for investigation indicating a possible violation of the General Code of Operating Rules governing operations of his train.

A hearing into the matter was held on March 6, 1998. Both Claimant and his Conductor were similarly charged and were present at the hearing. Both Claimant and the Conductor were found guilty as charged and assessed a Level 4 discipline under Carrier's UPGRADE Discipline Policy. Level 4 calls for a thirty-day Suspension and the completion of a "corrective action plan."

This Board has reviewed the record in detail and has found no basis in the record on which to modify or in any way mitigate against Carrier's original decision to assess both Claimant and his Conductor the same penalty. The record, however, reveals that the Conductor's penalty was reduced to a ten-day Suspension. In defense of its modification, Carrier argues that the Conductor was not as culpable as the Engineer, because the Engineer had the throttle in his hand, not the Conductor. This Board has decided many cases where a Carrier will take the opposite position on this point and insist that all crew members are responsible for the safe operation of a train and all are equally culpable when a violation of the rules occurs.

This Board finds the equal culpability doctrine applicable in this case. The Board therefore directs that Claimant's penalty be reduced to a ten-day Suspension and he be paid for twenty days lost time. All other conditions of his Level 4 discipline shall remain the same.

AWARD

Claim sustained in accordance with the Findings.

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 27th day of July 1999.