

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25024

Docket No. 44734

99-1-98-1-U-2008

The First Division consisted of the regular members and in addition Referee Barry E. Simon 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 G. B. Smith for removal of Level 4 Discipline (30 days suspension), under the Carriers ‘UPGRADE’ discipline policy. Additionally, claiming all lost time associated with the aforementioned suspension as well as time spent at the investigation, any fringe benefits 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.

Following a formal Investigation, Claimant was issued a Level 4 discipline in accordance with Carrier’s UPGRADE Discipline Policy. This discipline required Claimant to serve a thirty day suspension. According to Carrier, this discipline was administered because it was established that Claimant’s train was operating in excess of 20 MPH as it departed the yard at North Little Rock on December 13, 1996. The

applicable speed limits are 10 MPH within the yard and 15 MPH on the running track. Carrier supports its conclusion with speed tapes from the event recorders on the two units in Claimant's engine consist.

The Organization refutes the charge, noting that there were considerable discrepancies in the data between the two tapes. The Organization further avers Claimant's brakeman boarded the train at a point where the Carrier claims it was going 22 MPH. This, says the Organization, would have been impossible. The Organization also points out that the speedometer on the engine was not functioning properly.

While it is generally not the function of this Board to re-weigh the evidence in a discipline case, we will find that a Carrier's determination of guilt is unreasonable if the evidence supporting its conclusion is not substantial. In this case, the Carrier relied upon evidence it admits was laden with errors. It is evident the brake pipe and amperage readings on the event recorder tapes were not reliable. While there is some harmony between the two engines with respect to the speed readings, the Board is reluctant to accept the portion of the tapes relied upon by the Carrier, when other aspects of the tapes are disreputable. Given these doubts, the Carrier's evidence does not rise to the level of being substantial. The discipline, therefore, must be reversed.

The record reflects, however, that Claimant's Engineer Certificate was suspended during the period of Claimant's discipline. It is unrefuted that Claimant did not appeal the suspension of his Certificate. That is a matter beyond the jurisdiction of this Board. Accordingly, we must find that Claimant would not have been able to perform service during the period of his suspension, and therefore is not entitled to compensation for time lost, except for time spent attending the Investigation.

AWARD

Claim sustained in accordance with the Findings.

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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 2nd day of June 1999.