

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25116

Docket No. 44686

00-1-98-1-U-2001

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

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Union Pacific Transportation Company (former Chicago
(and North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim in behalf of Engineer D. H. Morgan, Union Pacific Railroad former Chicago and North Western Transportation Company, for compensation for all lost time including time spent at the Investigation and that this incident be removed from Claimant’s personal record and that he be removed from the Union Pacific Discipline System known as Upgrade when he was investigated on May 20, 1997, on the following charge:

‘derailment of CNW 8665 and exceeding speed limit, while operating within the confines of the Proviso Diesel Ramp at approximately 2:55 p.m. on April 11, 1997, while performing duties as crew member of OACHZ-09.’”

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.

After an Investigation the Claimant was sent the following notice:

"Refer to the Notice of Formal Investigation sent you under date of April 16, 1997.

After carefully considering the evidence adduced at the hearing held in Northlake, IL on May 20, 1997, I find that the following charges against you have been sustained:

"derailment of CNW 8665 and exceeding speed limit, while operating within confines of the Proviso Diesel Ramp at approximately 2:55 P.M., on April 11, 1997, while performing duties as crew member of OACHZ-09."

Therefore, you are in violation of General Code of Operating Rules, effective April 10, 1994. Your personal record indicates you are at Level 0, this incident is a Level 4. Based on the UPGRADE Progressive Discipline Policy you are now assessed Level 4 discipline. (which is thirty (30) day suspension and one day or one round trip alternative assignment with pay to develop a Corrective Action Plan to modify behavior. (See attached Form 3)

You are hereby suspended from the service of the Company. Your out of service time from April 14, 1997, thru May 14, 1997, will fulfill the suspension requirement. You must contact J. Donahue, MOP (708 649 5119) to make arrangements to develop a Corrective Action Plan, no later than July 4, 1997."

After reviewing the record the board cannot find that the Carrier's findings are supported by substantial evidence. There is no doubt that the engine consist the Claimant operated on the day in question ran over a derail causing the engine to depart the track.

Certainly the rules require him to be alert for such obstructions and required that he operate the engine in such a fashion that he can stop within half the range vision. However, it is noted that the derail in question was not marked as required by the rules by a blue flag. Just as important the derail has lost a significant amount of its high visibility paint through the process of chipping and by oil spills. The evidence shows two

written complaints to this effect were registered with the Carrier by others in the few weeks prior to this accident. In addition to the fact the derail tended to blend in with the color of the ground and the track there were snow squalls in the area on the morning in question. Given these facts it is difficult to say that the Claimant exercised less than the required diligence under the rules.

As for the issue of excessive speed there is evidence that there were unexplained irregularities with the event recorder that would call into serious question its reliability to distinguish whether the Claimant's engine was traveling 8.6 miles per hour or 7.5 mph or even five mph.

While the claim is sustained, however it must be stated that in doing so, no weight was given to the fact the FRA's Locomotive Engineer Review Board failed to sustain the Carrier's decision to revoke the Claimant's engineer certification. The FRA's decision is not binding as it relates to the adjustment of grievances under the collective bargaining agreement. Particularly disturbing was the FRA's conclusion that the Claimant had a fair hearing in conformance with the labor agreement. The NRAB, not the FRA, has the ultimate jurisdiction over disputes arising out of the application and interpretation of collective bargaining agreements.

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 30th day of March, 2000.