

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25130

Docket No. 44743

00-1-98-1-U-2031

The First Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (former Chicago and
(North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim in behalf of Engineer L. E. Bailey, SS# 432-21-9504, 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 April 11, 1997 at Northlake, Illinois on the following charge:

“exceeding the maximum allowable speed on the IHB lead track, designated as other than maintrack, resulting in the derailment of Train CCCMQ-30 and obstruction of the CCP westward main track at approximately 3:45 p.m., April 2, 1997 while working as crew members of Yard crew ‘4x89’, on duty 11:00 a.m. April 2, 1997.”

Subsequent to the investigation, claimant was disciplined with a Level 2 on the Upgrade Progressive Discipline System. Claimant was already at a Level 2 under the Upgrade Progressive Discipline System due to a previous incident. Claimant, with this Level 2 is now assessed a Level 3 discipline. Claim premised on the 1996 Dual Track System Agreement, Discipline Rule Attachment A.”

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.

By written correspondence dated April 7, 1997, the Carrier notified the Claimant that it was convening an Investigation to determine if Train CCCMQ-30 was exceeding the maximum allowable speed while traversing the Indiana Harbor Belt (IHB) lead track on April 2, 1997. In addition to the Claimant, who was the Engineer of Train CCCMQ-30, the Carrier sent a similar notice to the Peer Trainer-Pilot Engineer, who was in the cab with the Claimant when the alleged speed limit violation occurred. (See First Division Award 25131.) The Pilot Engineer was training the Claimant and the Conductor since both were unfamiliar with the territory. This was only the Claimant's third trip over this territory.

At the Investigation held on April 11, 1997, the Manager of Operating Practices testified that he was called to the scene of a derailment at the 17th Street crossing on the IHB lead track. The 23rd through 30th rear cars of the heavy 104-car coal train derailed during the afternoon of April 2, 1997. The derailment damage was extensive. At the time of the derailment, the engines and most of the train were located on the Chicago and Central Pacific (CCP) main track. The engines had traversed the IHB main and the IHB lead tracks.

The applicable operating rules provide for a maximum ten-mile per hour speed limit on the IHB lead while the restrictive speed on the CCP main line is 20 miles per hour. The Claimant declared that he was operating the train at 13 or 14 miles per hour when the train suddenly went into emergency due to derailment. While the Claimant insisted that he was traveling only 14 miles an hour and that he was easing off the

throttle at the time of the derailment, the speed tapes, as interpreted by the Manager of Operating Practices, disclosed that the lead engine was going 17 miles per hour.

The Claimant testified that he did not know if the rear of his train was still situated on the IHB lead. Neither the Conductor nor the Pilot Engineer, who were in the cab with the Claimant, took exception to the Claimant's speed.

While the record is not entirely clear, the Pilot Engineer set a counter so the crew could ascertain when their coal train cleared the IHB. The record is vague concerning whether the pilot set the counter for the train clearing the IHB main line or the IHB lead track. The record is also unclear as to exactly when the counter expired. Nevertheless, the Claimant believed that his train was no longer situated on the IHB lead.

Like the Claimant, the Conductor testified that he thought the train had cleared the IHB lead track. In any event, the Conductor was not aware that the train was speeding.

The Pilot Engineer testified that the last time he observed the speedometer, the train was going 9.2 miles per hour, which was under the ten-mile per hour speed restriction. The Pilot Engineer testified that he did not thereafter, feel any increase in the train's speed. Since he believed that the Engineer was properly operating the train, he turned his attention to instructing the Conductor about what towers and dispatchers to call to report that the train had cleared the IHB main line.

Following the Investigation, the Carrier assessed the Claimant a Level 2 on the Carrier's Upgrade Disciplinary Policy. Since the Claimant was already at Level 2, this second Level 2 raised the Claimant to Level 3. As a result, the Claimant was suspended for five days and he prepared a Corrective Action Plan.

It is irrelevant whether the train was traveling at 14 miles per hour, as attested by the Claimant, or at 17 miles per hour, as indicated by the speed tapes, because the train was still subject to the 10-mile per hour speed limit inasmuch as a portion of the train was still traveling over the IHB lead track. While the record is not entirely clear, about one-third of the heavy coal train, was still situated on the IHB lead. The higher 20-mile per hour speed restriction was not applicable until the entire train was on the CCP main line.

Thus, the evidence conclusively demonstrates that the train was traveling above the maximum allowable speed at the time of the derailment. The issue is whether the Claimant was culpable for the speed violation. The primary factual issue is whether the Claimant should have been aware that a portion of his train was still situated on the IHB lead.

Within the confines of the record before us, this Board concludes that the Carrier did not meet its burden of proving, with substantial evidence, that the Claimant was partially or wholly responsible for the speeding of Train CCCMQ-30 on April 2, 1997.

A close perusal of the Investigation transcript reveals a long series of questions and answers concerning the train's braking system. Certainly, the Engineer must adeptly use the various braking systems in conjunction with throttle operation to keep his train under control. However, unless the Claimant was aware that he was still subject to the ten-mile per hour speed restriction, there is nothing in the record to indicate that he misused or misapplied the brakes which resulted in the derailment.

Inasmuch as the Claimant was working under the specific instructions and tutoring of the Pilot Engineer, the Claimant was legitimately entitled to place some reliance on the expertise of the peer trainer. Since the train speed had increased from 9.2 miles per hour to at least 14 miles per hour and perhaps, as high as 17 miles per hour, the Pilot Engineer should have been sensitive to this surge in speed and brought the speed to the Claimant's attention. In addition, if the counter was not properly set or was not used to specifically count the distance it would take the coal train to clear the IHB lead, it was incumbent on the pilot to so inform the Claimant exactly what the counter was measuring. The Pilot was familiar with this territory and so, he knew from the location of the train's front end that the long train had not yet cleared the IHB lead. Instead of carefully watching the Claimant's movements, the Pilot Engineer negligently diverted his attention to instructing the Conductor.

Finally, this Board emphasizes that ordinarily a Pilot Engineer and the operating engineer are jointly culpable for operating rule infractions but, the Carrier, in this particular case, failed to prove that the Claimant knew or should have known that his train had not cleared IHB lead. Absent this proof, we must sustain the claim.

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 15th day of May, 2000.