

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 25132

Docket No. 44747

00-1-98-1-U-2032

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 D. W. Stegenga, SS No.479-70-2987, Union Pacific Railroad former Chicago and North Western Transportation Company, for compensation for all lost time including time spent at the investigation, 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 August 26, 1997 at Clinton Iowa on the following charge:

“At approximately 1630 on August 18, 1997 while employed as Engineer on Train ISAACS-14 you failed to control the speed of your train through a 10 MPH speed restriction at approximately MP 131.1, Track One on the Boone Subdivision.”

Subsequent to the investigation, claimant was disciplined with a Level 4 on the Union Pacific Upgrade Progressive Discipline Policy, which is attached as Employee's Exhibit 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.

The Carrier charged the Claimant, an Engineer, with failing to control the speed of his train through a ten miles per hour speed restriction at Mile Post 131.1, on the Boone Subdivision on August 18, 1997.

The following facts were adduced at the August 26, 1997 Investigation.

The dispatcher issued a verbal speed order to the Claimant's train, Intermodal Train ISAACS-14, restricting the train's speed to ten miles per hour at Mile Post 131.1. The speed tapes taken from the eastbound train traversing over the Boone Subdivision toward Clinton, Iowa, showed the train going approximately 40 miles per hour at Mile Post 131.1. At the time, a Welder and Welder Helper were repairing a defective frog at Mile Post 131.1. Because they were alert for approaching trains, the Welder and Welder Helper did not have any difficulty getting off the track. Neither the tracks nor the train suffered any damage as a result of the train going past Mile Post 131.1 at approximately 30 miles over the allowable speed.

The Claimant frankly admitted that he went by Mile Post 131.1 at about 40 miles per hour because he was in the process of slowing down to ten miles per hour for Mile Post 130.1, which was one mile further down the track. Stated differently, the Claimant sincerely believed that the ten miles per hour verbal slow order applied to Mile Post 130.1 and not Mile Post 131.1.

The tapes of the communications between the crew and the Train Dispatcher confirm that the Train Dispatcher properly communicated the ten miles per hour slow order for Mile Post 131.1 and that someone on the crew correctly repeated back the order. The Conductor testified that he repeated back the order to the Train Dispatcher but, he must have written the wrong mile post on a track warrant page. Indeed, the track warrant page proffered as an exhibit at the Investigation shows that the

Conductor wrote 130.1. Later, the Conductor relayed the Mile Post 131.0 information to the Claimant who wrote the same mile post (130.1) on a track bulletin form.

Thereafter, both the Claimant and the Conductor proceeded to operate the train as if the slow order was applicable to Mile Post 130.1 instead of Mile Post 131.1.

Following the Investigation, the Carrier assessed the Claimant a Level 4 on its Upgrade for failing to obey the maximum allowable speed as prescribed by Rule 6.31.

When a Train Dispatcher issues important instructions to the crew, the Engineer is under an obligation to listen to and fully comprehend those instructions. In this case, the record is very unclear as to why the Engineer did not write down the location of the ten miles per hour speed location at the time that the Dispatcher communicated the slow order.

If the Claimant had been more attentive, he could have later corrected the Conductor. Put differently, if the Claimant had written down the correct mile post while the Conductor was marking the wrong mile post, the crew would have, in all likelihood, contacted the Dispatcher to clarify the exact location of the slow order. Since the Claimant relied exclusively on the Conductor's ability to accurately write down the slow order, he is partially culpable for the speed restriction violation. Both crew members should copy a verbal slow order at the time of communication to avoid this type of error.

While the Board finds that the Claimant was partially culpable, the extenuating circumstances surrounding the handling of this particular verbal slow order justify a reduction in the discipline from a Level 4 to a Level 3. The Claimant's reliance on the Conductor, while it does not exonerate him, is a circumstance justifying mitigation of the penalty. Moreover, a Level 3 is a sufficient quantum of discipline to impress upon the Claimant that, as the operator of the train, he must be always attentive to Train Dispatcher communications.

### AWARD

Claim sustained in accordance with the Findings.

Form 1  
Page 4

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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 15th day of May, 2000.