

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 25266  
Docket No. 44969  
01-1-00-1-G-1714

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

(Brotherhood of Locomotive Engineers  
**PARTIES TO DISPUTE:** (  
(Grand Trunk National Railroad, Inc.

**STATEMENT OF CLAIM:**

“Claim on behalf of Engineer V. Hill for removal of discipline of forty (40) demerit marks and thirty days actual suspension, expungement of the incident from Claimant’s personal record and pay for all time lost, including time lost attending the Investigation conducted on July 27, 1998, in connection with incident of July 3, 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.

Claimant V. Hill is employed as an Engineer. On July 3, 1998, while working as an Engineer on Train Number 500, he held a train order that included a ten mile per hour slow order at Mile Post 253.6. The slow order had been obtained the previous afternoon by Track Department Welder Klummp. When the Claimant’s train passed Mile Post 253.6 where Welder Klummp was working, Klummp observed the train pass his work location at a speed greater than ten miles per hour. Welder Klummp called his

Supervisor to report that the Claimant's train passed his work location at a speed greater than ten miles per hour. Three hours after the call was made, a Carrier Officer stopped the Claimant's train to interview the crew. They were drug and alcohol tested, relieved of duty, and transported to their home terminal. The Claimant and his crew were given notice to appear at an Investigation in the matter. The Investigation was held on July 27, 1998. As a result of the Hearing, the Claimant was found guilty of improperly operating his train in slow order territory, and violating a ten mile per hour speed restriction. As a result of that violation, he was assessed a 30-day suspension, 40 demerits were placed in his record, and his Engineer's certification was suspended for 30 days.

The Organization appealed the discipline in accordance with the Agreement and appealed the decertification to the Locomotive Engineer Review Board of the Federal Railroad Administration. While the case was being handled on appeal through on-property procedures, the Engineer Review Board rendered a decision in the matter before it. It concluded that the Carrier acted improperly when it revoked the Claimant's Engineer Certification. In spite of the FRA decision, the Carrier concluded that the Claimant operated his train between 20 and 25 miles per hour through the ten mile per hour zone and denied the claim at all levels.

A review of the record reveals that the Claimant most likely did operate his train at 20 to 25 miles per hour past Mile Post 253.6. It also reveals that the Welder Klump did not set out a warning flag before the area of the slow order. Operating Rule 43 requires warning flags that indicate to the train crew that they must proceed to slow down. Failure to do so has no doubt contributed to the incident that took place here.

This issue before the Board is not unlike many cases it has reviewed in the past. An Engineer has operated his train past a slow order point at excessive speed. The area of the slow order, however, was not properly marked, as required by Rules and Regulation. In reviewing these cases, the Board has not infrequently reduced the penalty imposed on the Claimants involved. This is especially true in cases that the FRA overturned the Carrier's action of decertifying the Claimants for a period of time. In deciding this case, the Board has concluded that the mitigating elements of no warning flag being posted and the FRA decision that the Carrier's action in removing the Claimant's certification was improper more than support a major reduction in the penalty imposed on the Claimant.

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Based on the total record, the Board has concluded that the Carrier can make its point in this instance with an assessment of ten demerits on the Claimant's service record. The Claimant shall be paid for all lost time and benefits and his record so modified.

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 10th day of October, 2001.