

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION

Award No. 25393

Docket No. 45491

02-1-01-1-M-2088

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

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Northeast Illinois Regional Commuter (Metra)

STATEMENT OF CLAIM:

"Claim of Metra/Electric Engineer John Peters for removal of fifteen (15) days actual suspension issued on October 17, 2000 (retroactive from September 27, 2000 - October 11, 2000) for allegedly failing to properly perform his duties as Engineer on Train 139 on Monday, September 18, 2000 when he allegedly operated his train in excess of maximum authorized speed at various locations between 59th Street Station and Kensington Station between approximately 6:26 p.m. and 6:35 p.m. with all notations of discipline expunged from personal work record and compensation for all time lost from the time lost (sic), including time for attending the investigation."

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.

On October 17, 2000 the Carrier suspended the Claimant for 15 days. As a result of an Investigation held on October 9, 2000 the Carrier found that the Claimant, the Engineer had violated its Rules on September 18, 2000 when Train 139 was operated at speeds in excess of the time table speeds between 59th Street and Kensington.

The Claimant was the Engineer on an 8-car suburban train, No. 139, on the Carrier's Electric Line on September 18, 2000. On September 22, 2000 a carrier Officer was reviewing the event recorder because of a reported door light malfunction. While reviewing the tape the Officer noted the train was speeding between 59th Street and Kensington. As a result the Carrier cited the Claimant for an Investigation. The Organization states the Train was operated between the two stations between 6:21P.M. and 6:26 P.M. The Carrier states the times as 6:26 P.M. and 6:31 P.M., and the recorder shows the times as 6:26 P.M. and 6:34 P.M. The Board was not furnished with the time table times.

Prior to the Investigation the Local Chairman and the Carrier Officer reviewed the event tape. Because of the discrepancies in the times and the fact the recorder showed an improper brake pressure, the Local Chairman requested the event recorder from another car be used. The Carrier Officer refused to do so.

A review of the transcript of the Investigation finds a lack of testimony that Train 139 was late leaving 59th Street or early in arriving at Kensington. The Carrier did not present any evidence as to the accuracy of the recorder. The Carrier also used hearsay testimony as to the correctness of the speedometer on the train.

The Carrier has the burden to prove the Claimant violated its Rules. While the Carrier had the opportunity to verify the event recorder, it opted not to do so. The Carrier has failed to meet its burden in this case.

#### AWARD

Claim sustained.

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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 23rd day of October, 2002.