

Award No. 544
Case No. 544

PUBLIC LAW BOARD NO. 5383

BROTHERHOOD OF LOCOMOTIVE ENGINEERS)	
)	
vs.)	Parties to Dispute
)	
UNION PACIFIC RAILROAD COMPANY)	

STATEMENT OF CLAIM:

Claim in behalf of Engineer T. J. Burke, Union Pacific 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 when he was investigated on the following charge:

"Your responsibility for your failure to operate your train in accordance with speed restrictions on the East Iowa Subdivision between Boone, Iowa and Clinton, Iowa and your violation of Federal Regulations 49 CFR Part 240.117(e) on March 6, 1992 while employed as engineer of 8021 East, ROPPC."

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within

the meaning of the Railway Labor Act, as amended, and that the Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

Claimant was found responsible for failure to operate his train within speed restrictions between Boone and Clinton, Iowa. He was assessed five (5) days suspension and his locomotive engineer's license was revoked for thirty (30) days per FRA regulations.

The incident occurred on March 6 and the speed recorder tape was processed on March 19. It was established at the investigation that the tape of the lead locomotive unit was not usable and the tape from the second unit was the basis for the charge and the finding of responsibility. It was stated at the investigation that the engineer verified the accuracy of the speedometer on the first unit but not the second. The tapes used indicated excess speed up to eight (8) mph at times.

There are aspects of this case that are troubling to the Board. In addition to the rather long time between the trip and the processing of the tape from the second unit is the lack

of a chain of custody for the only evidence against the accused.

In First Division Award 24021, a UP case, it was held in part as follows:

"While it is not necessary in a discipline case for Carrier to prove beyond a moral certainty the truth of the charge, there still must be some evidence in the record which supports the Carrier's assertions. In this case, Carrier bases its action against Claimant upon speed recorder tapes. But there is no certification of authenticity of the tapes, and no claim of custody. Moreover, even if the tapes could be deemed authentic, there was no calibration of the recording device."

The elements in Award 24021 are also present here. The claim will be allowed under this precedent.

AWARD

Claim is sustained.

ORDER

The Carrier is ordered to make this Award effective within thirty (30) days from the date shown below.

B. L. Ivan Arthur
Employee Member

[Signature]
Carrier Member

[Signature]
Chairman and Neutral Member

Dated: 3-20-98