

Award No. 555  
Case No. 555

PUBLIC LAW BOARD NO. 5383

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

STATEMENT OF CLAIM:

Claim in behalf of Fireman F. Smith, 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 when he was investigated on the following record:

"Your responsibility in connection with your failure to properly control the speed of your train when you were radarred at 41 MPH in a 30 MPH train order restriction at MP 28.8 on the Geneva Subdivision on July 26, 1983 at approximately 5:17 AM while employed as crew member on No. 14."

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 properly control the speed of his train and he was disciplined with thirty (30) days suspension.

There is a procedural defect in this case that requires a sustaining award by this Board. The investigation was held on July 28. The record shows that it was discontinued on that date due to "TAPE INAUDIBLE". Claimant was then sent another letter with the same charge for investigation to be held on August 16. As was stated in Award 103 of PLB-5035 (UTU v. C&NW), "The hearing was rescheduled for March 14, and the proceeding "retried". We find no provision for such second hearing." The second hearing was not within the time limit of the discipline rule.

The matter could have been handled rather easily if the officers conducting the original hearing had made it a matter of record that the hearing was in recess due to equipment

difficulties. Since they did not do this, the claim is valid for technical reasons described above.

AWARD

Claim is allowed.

ORDER

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

B. H. Isaac Arthur  
Employee Member

R. J. Gonzalez  
Carrier Member

D. Kelly  
Chairman and Neutral Member

Dated: 3-20-78