

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6041**

JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
GENE L. SHIRE, CARRIER MEMBER
DON HAHNS, EMPLOYEE MEMBER

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BNSF SANTA FE, GENERAL COMMITTEE**

and

**BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY**

Award No. 9
Case No. 9
V. L. Griego

*Date of Hearing - October 22, 1997
Date of Award - March 26, 1998*

Statement of Claim:

Claim for New Mexico Division Engineer V. L. Griego for pay for all time lost while being withheld from service from the Burlington Northern Santa Fe Railway Company while serving said one hundred twenty day suspension, including pay for time lost attending the formal investigation and that Mr. Griego's personal record be expunged of any mention of the incident of January 15, 1995.

FINDINGS:

Public Law Board No. 6041, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

On January 15, 1995, the herein Claimant, Engineer V L. Griego, was operating Train 1-199-14 in interdivisional service between Belen and Clovis New Mexico. In the locomotive cab at the time were two other employees, the Conductor and a Student Conductor. About 100 miles before Mile Post 752.4, the Student Conductor had a discussion by radio with the Train Dispatcher concerning a slow order being issued to a number of trains for that location, where a Maintenance of Way Track Welder and his Helper were working on a defective frog. Neither the Conductor or the Student Conductor ever "formalized" the slow order with the Dispatcher, nor did they specifically mention it to the Engineer. Instead they commented to each other that maybe it would be lifted when the train got their.

The Track Welder failed place yellow flag protection along the right of way in the area that he was working. And as Train 1-199-14 approached Mile Post 752.4, the

Engineer being unaware of the speed restriction, did not slow down, running past the Welder and his Helper at about 51 miles per hour. The Welder contacted the Dispatcher, who in turn contacted the crew and instructed them to take their train to Mile Post 681, secure it and await the arrival of an Assistant Superintendent. The crew was taken off the train and required to submit to a drug screen, which was negative for all three. That day, the Conductor and Student Conductor accepted responsibility for the incident, waived formal investigation and were each given one hundred twenty day suspensions. Claimant, at first agreed to waive his investigation, but then changed his mind.

On January 20, 1995 he was formally charged with failure to comply with a Track Bulletin, and was cited to attend an investigation, which would be a joint disciplinary proceeding and Engineer Certification revocation hearing. Following the conclusion of the investigation Claimant was disciplined with a one hundred twenty day suspension, and his Engineer Certification was revoked for thirty days.

The revocation of Claimant's Engineer Certification was appealed to the Locomotive Engineer Review Board, where on May 21, 1997, it was reversed. The disciplinary suspension was appealed to this Board.

In its May 21, 1997 determination the Locomotive Engineer Review Board noted:

The record indicates that the dispatcher and the entire train crew violated railroad operating rules pertaining to the use of radios and that the crew did proceed through a speed restriction at excessive speed. However, the evidence suggests that the [Engineer's] role in this violation was as an uninformed contributing party. In this case, the LERB finds that while Petitioner had some culpability in the overspeed, he was never in possession of the speed restriction information. The speed restriction was neither officially transmitted to [Engineer Griego's] train nor was [the Engineer] properly informed of this restriction. Under such circumstances, [Engineer Griego] could not be reasonably expected to have known about the speed restriction.

After a thorough study of the entire record made before this Board, we are compelled to arrive at the same result as that of the Engineer Review Board. It is manifest in this record that the Dispatcher, the Conductor and the Student Conductor violated Operating Rules in their handling of the Slow Order. It is also apparent that the Slow Order was never properly transmitted to Claimant, or that he was made aware of it at all. The incident was compounded by the failure of the Welder to protect his work area with a yellow flag.

In the totality of the circumstances involved, even though serious injury or death may have been a result of considerable overspeed of the train in the area where the Welder was working, it was inappropriate to issue a suspension to Claimant, as it has not been shown in this record that his involvement was the result of his inattention to duty, or his disregard of Carrier's Operating Rules.

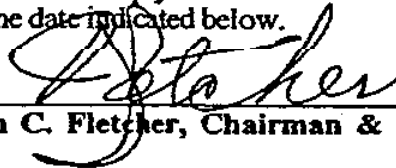
The claim will be sustained. Having reached a decision on the merits of the claim before the Board, it is not necessary to visit the procedural contentions raised by the Organization concerning the conduct of the investigation.

A W A R D

Claim sustained

O R D E R

Carrier is directed to comply with this award and make any payments due Claimant within thirty days of the date indicated below.



John C. Fletcher, Chairman & Neutral Member


Gene L. Shire, Carrier Member
Don Hahs, Employee Member

Dated at Mt. Prospect, Illinois., March 26, 1998