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Award No. 4  
Co. File 1214571  
Org. File 28057

**PUBLIC LAW BOARD NO. 6567**

**Parties:**

Brotherhood of Locomotive Engineers  
And  
Union Pacific Railroad Co.

**Statement of claim:**

Claim of Engineer R.O. Denton Jr. (hereinafter claimant) for compensation for all time lost including time lost attending investigation. This in connection with claimant's assessment of Level 4 Upgrade and 30 day suspension on December 24, 1999. Further, claimants annual vacation rights be restored, and he should be compensated accordingly. Claimants personal record to be expunged of any notation or record pertaining to this case.

**Background:**

Claimant entered carrier's employ on August 31, 1979, and was promoted to engineer on March 14, 1986. On the date of the within incident (December 1, 1999) claimant was operating in through freight service on train identified as MWCHN-29, operating between Vaughn and Tucumcari, NM. The other employee was conductor J.R. Hamilton who accompanied claimant in the cab of the locomotive.

**Carriers Position:**

Carrier officers were conducting efficiency tests in an area slightly west of Tucumcari, NM at or around Milepost 1622. The officers state that they extinguished signal 1622.6, thereby causing the preceding signal to be red or in stop position. This situation would require that claimants train stop on red then proceed through the area at restricted speed, not exceeding twenty (20) miles per hour.

Mr. Jeffers, one of the officers conducting the tests states that he observed claimants train operating at a speed he thought was excessive. When the train stopped the two officers (Messrs Jeffers and Craft) boarded the locomotive to question the crew about their speed, also, why they did not promptly report signal 1622.6 as being out. The crew was then told to yard the train, after which questioning continued. After examination of the engine recorder tape, the officers determined claimant operated his train slightly in excess of allowed speed. The conclusion reached by the officers is that claimant violated rule 6.27, 6.31, 5.15 and 51-02 of Timetable #1.

#### Organizations position

The carriers findings in this case are based on errors in the engineers event recorder tape. The tape indicates the distance from Vaughn to M.P. 1624 to be 102.3 miles when in reality the distance is 97 miles. Therefore, if the distance is wrong the speed on the tape is in error. The recordings on the event records indicate that the engineer initiated corrective action whenever the train speed approached the maximum allowable speed. The conductor testified the engineer made frequent adjustments to keep the train speed within the allowable parameters.

With respect to the charge of not promptly reporting signal 1622.6 as out, the crew explained they waited for the hot-box scanner to report thereby precluding radio interference while talking to the train dispatcher.

The conductor (J.R. Hamilton) who was initially accused, accepted handling under the CORE program, thereby becoming solely a witness at the hearing.

**Findings:**

The testimony is such that a finding of guilt would be a miscarriage of justice. To further prove his innocence, claimant invited the carrier to test his speedometer while another officer used radar from the ground. The carrier officers declined this offer. From all of the evidence introduced at the hearing it appears the claimant is quite knowledgeable and rule compliant.

**Award:**

Claim sustained

  
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Leonard Foster, Neutral Member of the Board

1-22-03

Date