

SPECIAL BOARD OF ADJUSTMENT

NO. 1063

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-VS-

NORFOLK SOUTHERN CORP.
(N&W RAILWAY COMPANY)

DOCKET NO. OE - FTW - 95 - 2

CASE NO. 213

CLAIMANT: R.F. Hildebrand

FOR THE CARRIER: K.J. O'Brien, Director, Labor Relations

FOR THE ORGANIZATION: P.T. Sorrow, Vice President, BLE

NEUTRAL: Dr. James R. McDonnell

STATEMENT OF CLAIMS

Claim of Lake Division Engineer R.F. Hildebrand for removal of 120 day actual suspension and pay for all lost time assessed for failing to control the speed of his train in accordance with speed restriction at Mileposts CF182.3 and CF182.1 while serving as crew member on Train LF10, on November 17, 1994.

FINDINGS

Upon the whole record and all evidence after the November 4, 1997 hearing in the Carrier's office, Norfolk, Virginia, and study of post-hearing submissions received on or before November 4, 1997, the Board finds that the parties herein are carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and the subject matter.

DECISION

Although there is no question that the Claimant exceeded the 10 MPH slow order on the day in question, the Board takes notice of a mitigating circumstance.

The Claimant and his conductor searched the dispatchers bulletins to determine if there were any slow orders. They searched the bulletins for the New Castle District and found none.

The Organization argues that:

On the day of the incident it was clear to the Carrier the crew assumed the slow order was on the Huntington District, not on the New Castle District. It is obvious that if the train orders stated a location in addition to mile post numbers the confusion could be eliminated. Immediately after the incident the Carrier issued Notice #21 which is Exhibit 3 in the transcript. This notice requires that locations and mile posts be listed on train orders. It is our position that confusing train orders were created by Mr. Zimmerman and his dispatcher's office.

The Board is persuaded that there was a degree of confusion and that the level of penalty should be reduced against the Claimant.