

Award No. 152
Case No. 204
UTU File No. 642
Carrier File No. 320 8877

PUBLIC LAW BOARD NO. 596

PARTIES TO DISPUTE: United Transportation Union (C-T)
vs.
Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim for the removal of 30 deferred days suspension assessed Brakemen J. B. Benton and R. E. Thompson with pay for all time lost and all rights unimpaired.

STATEMENT OF FACTS:

At approximately 2:45 PM February 6, 1982 near Corning, Arkansas, Trainmaster G. W. Smith and Diesel Supervisor D. Smith made a surprise field test on the CH train Extra 2971 South with a radio gun and reportedly shot the speed of the train at 45 mph, in violation of Arkansas General Order No. 29 stating "C-trains 40 mph." Trainmaster Smith radio stopped the CH train, had conversation with the crew members, formal investigation was set February 12, 1983, discipline issued February 19, 1982.

The investigation revealed that Brakeman R. E. Thompson was on the lead unit with the engineer and fireman. Brakeman J. B. Benton was riding the second unit. Both units were equipped with a working speed recorder.

Based on the evidence presented at the investigation, Superintendent M. F. Kelly determined that the Claimants, along with their engineer and fireman who were running the locomotive, were guilty as charged. The engineer and fireman were assessed 30 days actual suspension. The Claimants received 30 days deferred suspension as set forth in notice dated February 19, 1982, reading:

"You are hereby advised that your record has this date been assessed with 30 days deferred suspension account your violation of General Rule B and definition of maximum speed of the Uniform Code of Operating Rules in connection with failure to comply with instructions when your train exceeded the prescribed speed limit while working as brakeman, Train CH05, EX2971 So at 2:45 pm Feb. 6, 1982, Corning, Arkansas; as result of investigation held North Little Rock, Ark. on February 12, 1982. Your record now stands 'THIRTY (30) DAYS DEFERRED SUSPENSION.'"

FINDINGS:

A careful and considerate reading of the entire record in this case creates serious doubts of the justice of the penalty imposed upon the brakemen J. B. Benton and R. E. Thompson, herein charged. In the first place they were not operating the power and the speed of the train, even if above the lawful speed limit, was so slightly excessive as not to draw attention. Second, the Carrier's evidence is based largely upon the evidence of an automatic apparatus which took one shot of the train coming and going away, but there is no conclusive evidence of the accuracy of such machine. This, in combination with the testimony of several crew members who had speedometers and the same or other crew members who made standard checks against mile posts traversed and time pieces, tends to make the automatic measuring machine less than conclusive.

Note the testimony of E. M. Kidd, in material part:

- Q. Please state your name and occupation.
- A. E. M. Kidd, Locomotive Engineer
- Q. Were you working as the engineer of the CH05 train on February 6, 1982?
- A. Yes sir I was.
- Q. Being the engineer of the CH train were you responsible for the proper handling of the train?
- A. Yes sir.
- Q. Where were you located on the CH train about Mile Post 188, pole 22 on the day in question?
- A. On the rear seat on the left side or fireman's side of the cab.
- Q. Was this on unit 2971?
- A. Yes it was.
- * * * * *
- Q. Was there a speed recorder on engine 2971 lead engine?
- A. Yes sir.

- Q. Did you assume the accuracy of the speed recorder on engine 2971?
- A. No sir.
- Q. How did you verify the accuracy?
- A. In the usual manner, by checking the speed of the train by the watch and the mile pole and observing speed recorder.
- Q. Did you use your certified standard watch to do this?
- A. I did not have any other watch other than a standard watch to check this. I do not carry a stop watch.
- Q. What was the maximum speed for the CH train near mile post 188, pole 22 on the day in question?
- A. 40 mph.
- Q. Did Trainmaster Smith ask you what the maximum speed allowed by your train was near Corning, Arkansas?
- A. I don't recall Trainmaster Smith asking me what the required speed was. I do recall him telling us the speed that he checked us running at and I do recall the answer I gave him.
- Q. Were you complying with instructions concerning maximum speed on the CH train February 6, 1982 near mile post 188, pole 22?
- A. Yes sir.
- Q. Are you as an engineer required under the provisions of the rules to check the conditions of the speed recorder whether it is working or not, report any damage to the speed recorder and whether it is sealed or not?
- A. Yes sir, I am, and this I did on the date in question which is entered here on Exhibit "B".

Q. Did you check your speed more than one time before reaching mile post 188, pole 22?

A. Yes sir, I did.

Q. What was your speed at this location?

A. The speed varied from the time we left Poplar Bluff until we reached 40 mph. I checked to note if the train was traveling 40 mph prior to the speed recorder registering 40 mph and after it reached 40 mph me sitting on the opposite side of the cab looking at the speed recorder at an angle each time, I checked the recorder we would be approximately 1 min. 30 sec a mile. And not only on this date but at all times I keep a check on these speed recorders because they do sometimes vary.

There was considerable other testimony in the record from other crew members to substantially the same effect.

Careful consideration of the entire record in this case requires reversal of discipline as herein rendered, and removal of same from Claimants' record.

AWARD:

So ordered.

Leverett Edwards
Leverett Edwards, Neutral Member & Chairman

P. W. Sweet
For the Organization

O. B. Sayers
For the Carrier

Dated 5/21/84

At Ft. Worth, Texas