

Award 19145

Docket 30868

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle Street, Chicago 3, Illinois

With Referee John F. Sembower

PARTIES TO DISPUTE:

**BROTHERHOOD OF LOCOMOTIVE FIREMEN
AND ENGINEMEN**

**THE NASHVILLE, CHATTANOOGA AND
ST. LOUIS RAILWAY**

STATEMENT OF CLAIM: "Claim of Fireman E. C. Cunningham, Atlanta Division, for the removal of ten days recorded suspension and pay for 272 miles for trip held off account alleged responsibility for Engineer A. C. Mayers for whom he was firing exceeding the speed limit at certain points on the trip on March 10, 1947."

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

Claimant fireman asks that his record be cleared of ten days recorded suspension and seeks payment for a 272 mile trip from which he was held out of turn to attend the investigation of a speeding charge against his crew.

Some four years elapsed between the final exchange of correspondence between the parties on the property and the filing of claimant's ex parte submission here, but as we noted under similar circumstances in Award 16346, Referee Carroll R. Daugherty, "the Railway Labor Act contains no provision limiting the time within which claims may be filed by employes. Nor does the parties' agreement applicable to the instant case contain any such statute of limitation," so we must consider the claim, despite carrier's objection that laches has run.

We are concerned solely with the charge that claimant violated Operating Rule 522 requiring him to, "Closely observe train signals; read train orders, keep them in mind, should there be occasion to do so, remind enginemen." The speeds involved are pertinent only in so far as they shed light upon whether there was substantial evidence at the investigation that claimant had "occasion" to remind the engineer, and failed to do so.

The Statement of Facts in claimant's ex parte submission says that the allegedly excessive speeds ranged from only 1.4 to 2.9 miles per hour above the permissible leeway of five miles an hour beyond the applicable maximum speeds at the points involved. After it was brought out by the transcript of the investigation, which appears in the record as an exhibit, and in the carrier's submission, that in fact the excessive speeds charged included 16 to 28 miles an hour above a maximum of 20 miles per hour established by a special train order, the claimant in his rebuttal submission states that he had not previously been furnished with a copy of the statements of carrier's two speed checkers.

This might be a serious defect, indicating that the parties had not fulfilled their obligation to attempt adjustment on the property, were it not for the fact that in the carrier's final letter rejecting the claim it was stated plainly that the train was clocked at speeds varying from 36 to 48 miles an hour on the portions of the track restricted by the special order. And, of course, this was developed in testimony at the investigation.

Claimant may have shown commendable awareness of the train order and his responsibilities thereunder, but despite the relative shortness of his experience of approximately four and one-half years compared with the engineer's twenty years, and his own professed lack of expertness at sensing speed, it appears from the condition of this record that he was unduly diffident in not seizing the "occasion" to warn the engineer, pursuant to the rule, when the train's speed was 36 to 48 miles an hour in a twenty mile zone established by the train order, and we must deny the claim.

AWARD: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April, 1959.