

PUBLIC LAW BOARD NO. 5263

**Case No. 240
Award No. 240**

United Transportation Union)
)
) **PARTIES TO DISPUTE**
)
vs)
)
Union Pacific Railroad Company)

STATEMENT OF CLAIM

Claim of B.A. Smith, ID #0420377, for the removal of Level 4 of the UPGRADE Progressive Discipline Policy - Behavior Modification Policy (30 days actual suspension) from his personal record, and he be compensated for any and all lost time, including all time withheld from service, and time spent attending an investigation held on November 14, 2006 when charged with an alleged responsibility "in connection with your alleged failure to comply with a Yellow Flag with restriction not specified in writing and operated train in excess of 10 mph over the maximum authorized speed, at approximately 0:05 Hrs. at approximately MP 147.2 on the Mason City Subdivision, while employed as a crew members on train MSSNP 01, on duty at 1835 Hrs. on November 2, 2006 at Mason City, IA".

FINDINGS

This Board finds the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction over the dispute involved herein. The parties to said dispute were given due and proper notice of hearing thereon.

Carrier suspended the Claimant for 30 days account violation of Rules 5.4 2B and 6.31. At an investigation held on November 19, 2006 the Carrier found the Claimant failed to observe a yellow flag on November 2, 2006 as a conductor on MSSNP.

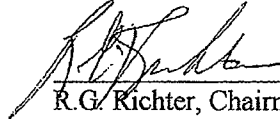
Four Company Officers were conducting "Operating Tests" on the date in question on the Mason City and Clinton subdivisions. The speed limits on these subdivisions is 60 MPH. The Organization argues the Carrier Officers did a test that is improper. It argues that what the Officers did is restricted to subdivisions with a speed limit of 40 MPH or lower. Rule 5.4.4 requires a train to reduce its speed to 10 MPH within 2 miles. On subdivisions with speeds over 40 MPH a yellow flag must be accompanied by track bulletins and track warrants.

It is apparent the test was improper and to discipline an employee for doing something contrary to the Rules is improper.

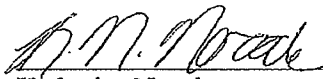
The claim will be sustained, and all references to this action will be removed from the Claimant's record. Claimant is also to be paid for all time lost.

AWARD

Claim sustained. Carrier is ordered to comply with this Award within 30 days from its date.



R.G. Richter, Chairman
Neutral Member



Katherine Novak
Carrier Member



Michael J. Reedy
Employee Member

Dated 10/17/08