

**PUBLIC LAW BOARD NO 7026**

AWARD NO. 19  
CASE NO. 19

PARTIES TO  
THE DISPUTE

UNITED TRANSPORTATION UNION  
(COAST LINES)

VS.

BNS RAILWAY COMPANY

ARBITRATOR: John L. Easley

DECISION: Claim Sustained

DATE: July 7, 2008

**STATEMENT OF CLAIM:**

Claim of Southwest Division Conductor V. Barton for removal of Level S, 30 day record suspension from his personal record and pay for any time lost account of this incident.

**FINDINGS OF THE BOARD:**

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by the agreement of the parties, that the Board had jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Under date of January 25, 2007, Conductor V. Barton, hereinafter referred to as the Claimant was instructed to attend a formal investigation as follows in pertinent part:

“Attend formal investigation at the BNSF Conference Room, 1535 North Park Drive, Winslow, Arizona, on Monday, February 12, 2007, at 12:01 P.M., with your representative and witness (es), if desired, to develop the facts and place responsibility, if any, in connection with possible violation of Rules 1.47, 6.22, and 6.31 of the General Code of Operating Rules, Fifth Edition, effective April 3, 2005, and Rule 103.71 of the Air Brake and Train Handling Rules, No.3, in effect July 13, 2003, as supplemented or amended, alleging your failure to control your train speed between MP 131.38 to MP 132.68, Gallup Subdivision, exceeding maximum authorized speed of 55 MPH as prescribed in Item 1(A) of the Southwest Division Timetable, at approximately 4:25 P.M., on January 14, 2007, while working as crew on Train H-KCKBAR1-12A.”

The Claimant was in charge of Train H-KCKBAR1-12-A, 49 loads, 42 empties 8019 tons, Belen New Mexico to Winslow Arizona, En route at Mile Post 130.5 the train started on a descending grade of 1 per cent, at MP 131 the train speed had increased to 63 MPH exceeding the maximum of 55 MPH. The Locomotive Engineer quickly took corrective action and

brought the train speed down to 55 MPH.

During the hearing it was brought out that from the time the train began to exceed the maximum allowable speed the Engineer started to take action within 19 seconds and one minute seven seconds later the train was at the proper speed without having had to resort to any emergency actions.

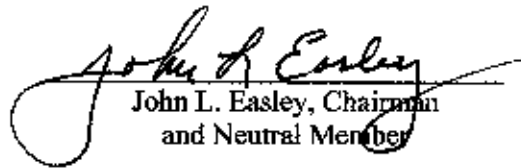
In advance of the incident at MP 128.7 the Claimant called a clear signal, got up to stretch his legs and to provide a job briefing to the Engineer concerning the work to be performed at Gallup, both a pickup and a set out. He did not see either speedometer at this time and was not aware of the eight MPH speed infraction.

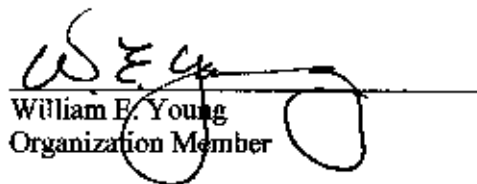
The Board holds that the Claimant was occupied with his normal duties and that inasmuch as the Engineer took corrective within such a short period of time ie. 19 seconds. The first notice the Claimant would have of the over speed is the engine going from power to dynamic braking. There is no reasonable basis to assess the Claimant discipline.

AWARD: Claim Sustained.

EXECUTION ORDER:

The Carrier will comply with this award within thirty days of the above date.

  
John L. Easley, Chairman  
and Neutral Member

  
William E. Young  
Organization Member

  
Melissa A. Beasley  
Carrier Member