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PUBLIC LAW BOARD NO. 5383

BROTHERHOOD OF LOCOMOTIVE ENGINEERS )  
 )  
 vs. ) Parties to Dispute  
 )  
 UNION PACIFIC RAILROAD COMPANY )

**STATEMENT OF CLAIM:**

Claim in behalf of Engineer M. Pawluk, Union Pacific Railroad former Chicago and North Western Transportation Company, for compensation for all lost time including time spent at the investigation and that this incident be removed from Claimant's personal record when he was investigated on the following charge:

"Your responsibility for your failure to properly perform your duties resulting in derailment and subsequent damage to your train (NPCRA) at approximately 1015 on May 3, 1993 at Proviso while employed as crew members of NPCRA, 7004 East on duty 0330 at Clinton, Iowa on May 3, 1993."

## FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within...

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the meaning of the Railway Labor Act, as amended, and that the Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

Claimant Engineer was disciplined with five (5) days suspension when found responsible in connection with derailment and subsequent damage at Proviso.

The operative facts are that Claimant and crew set out a bad order, doubled back to remainder of their train, and when they pulled ahead six (6) cars were found to have been derailed.

At the investigation there was testimony that concluded the cars were derailed by a hard coupling. There was also testimony on behalf of the accused that the accident was caused by a defective flange on a wheel and/or a wheel picking a switch point.

The Board finds that there is not sufficient evidence in the record to support the conclusion that the Engineer was responsible for the derailment. It was stated, and not contradicted, that the coupling was made at three (3) to

four (4) mph. The industry standard is not more than four (4) mph. In addition, Claimant was shoving as directed by his ground crew and his engine was forty (40) car lengths from the coupling. If he was following directions, and there is no evidence that he was not, he could not be faulted for doing what he was told to do.

AWARD

Claim is sustained.

ORDER

The Carrier is ordered to make this Award effective within thirty (30) days from the date shown below.

B. W. Isaac Arthur,  
Employee Member

W. J. Gonzalez  
Carrier Member

B. C. Ceeley  
Chairman and Neutral Member

Dated: 4-24-98