

**PUBLIC LAW BOARD NO. 5943**

<b>PARTIES</b>	)	<b>BROTHERHOOD OF LOCOMOTIVE ENGINEERS</b>
<b>TO</b>	)	
<b>DISPUTE</b>	)	<b>UNION PACIFIC RAILROAD COMPANY</b>

**STATEMENT OF CLAIM**

Claim on behalf of R. J. Prejean for reimbursement of lost wages, if any, as a result of 40 day suspension served prior to his leniency reinstatement.

**OPINION OF BOARD**

The speed tape from Claimant's engine showed that immediately prior to a derailment on June 30, 1993, Claimant operated his engine at speeds up to 19 m.p.h. on a track that had a 10 m.p.h. limit. In accord with F.R.A. regulations, Claimant's license was suspended for 30 days. The Carrier also dismissed Claimant by letter dated July 10, 1993, but reinstated Claimant on a leniency basis per Claimant's request of August 20, 1993. Car. Exhs. B, E, F. The leniency request further stated that "It is further understood that I reserve my right to further pursue any claims not filed, pending or to be filed by individual and/or Organization in connection

with my dismissal of July 10, 1993." Car. Exh. B.

Substantial evidence from the speed tape supports the Carrier's determination that Claimant was speeding in violation of the relevant rules. Moreover, Claimant's request for leniency effectively admits to the alleged misconduct.

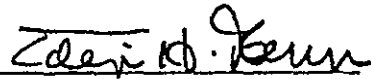
Leniency is the prerogative of the Carrier, not this Board. However, the leniency reinstatement agreement allows Claimant the ability to progress certain aspects of the disciplinary action, ultimately to this Board.

Claimant has effectively been given a 40 day suspension. Although this Board's function in determining whether a decision to discipline is appropriate looks to the existence of substantial evidence in the record to support that decision to discipline, our function concerning the *amount* of discipline imposed is to determine whether the amount assessed is arbitrary. We find under

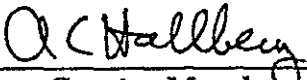
the circumstances that a 40 day suspension in this case is excessive and arbitrary. Under the facts of this case, the amount of suspension commensurate with the loss of Claimant's license for 30 days is sufficient. Claimant's suspension shall be reduced to 30 days. Claimant shall receive 10 days pay.

**AWARD**

Claim sustained in part. Claimant's suspension shall be reduced to 30 days. Claimant shall be made whole for 10 days pay.



Edwin H. Benn  
Neutral Member



Carrier Member  
A. C. Hallberg



Organization Member  
W. R. Slone II

Fort Worth, Texas

Dated: 8/1/98