

**Form 1**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

**Award No. 26829  
Docket No. 46602  
09-1-NRAB-00001-070038  
07-1-38**

**The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.**

**PARTIES TO DISPUTE: (United Transportation Union  
(BNSF Railway Company**

**STATEMENT OF CLAIM:**

**“Organization File# DISP MCDONALD 2/21/02  
Carrier File# 53-02-0486D**

**Claim in behalf of Vancouver, WA Conductor T. L. McDonald for lost wages and complete record clearance account thirty (30) day record suspension for alleged violation of GCOR 1.13, GCOR 1.47 and Northwest Timetable # 1 (alleged excessive speed and subsequent derailment) on February 21, 2002.”**

**FINDINGS:**

**The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:**

**The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.**

**This Division of the Adjustment Board has jurisdiction over the dispute involved herein.**

**Parties to said dispute were given due notice of hearing thereon.**

As a result of an Investigation held on March 8, 2002 the Carrier found the Claimant violated Rules 1.13 and 1.47 on February 21, 2002 which allegedly resulted in the derailment of Train L-NWE 6631-21A. On March 18, 2002 the Carrier issued the Claimant a Level-S record of a 30-day suspension.

The facts in this case are that on February 21, 2002 the Claimant's train derailed at MP 91.48. The readout of the locomotive data recorder shows that the speed of the engine at the time of the derailment was 29 MPH. The speed limit for the area is 25 MPH. At MP 79.9 the speed limit changes from 10 MPH to 25 MPH. From MP 79.9 the data recorder shows that the train operated at speeds from 21 MPH to 31 MPH with the Engineer making throttle adjustments throughout. The Road Foreman of Engines found no fault with the Engineer's actions as the train traversed the district. He also testified that the cause of the derailment was the track condition.

The Carrier failed to prove that the Claimant violated its Rules. As such, the discipline will be removed and he will be paid for all time lost, if any.

**AWARD**

**Claim sustained.**

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division**

**Dated at Chicago, Illinois, this 2nd day of April 2009.**