

1408 RAILROADS: SPEED: NO LIMIT

Even though the Office of the Commissioner of Railroads has not fixed a maximum speed for trains approaching and crossing the highway (street) in question, it is, nevertheless, the duty of the train crew to operate a train at a speed that is reasonable and prudent under the circumstances when there exists in the immediate area of the crossing unusual or peculiar conditions with respect to obstructions to the view of a user of the highway (street) crossing who is in the exercise of due care.

If you find that there existed, at the time and place in question, unusual or peculiar conditions affecting the view of an oncoming train, then it was the duty of the train crew to exercise ordinary care to regulate the train's speed to avoid colliding with any user of the highways who is crossing the tracks in compliance with legal requirements and using due care.

COMMENT

The instruction and comment were originally published in 1967 and revised in 1980 and 2005.

A negligent speed is not causal merely because it brings the train to the grade crossing at the instant it did, even though, if the train had been traveling more slowly, the user of the highway might safely have crossed ahead of the train. Dombeck v. Chicago, M. St. P. & P. Ry., 24 Wis.2d 420, 129 N.W.2d 185 (1964). Also McLuckie v. Chicago, M. St. P. & P. Ry., 5 Wis.2d 652, 94 N.W.2d 182 (1958).

To be causal, the negligent speed must either: (1) mislead the motorist or user of the highway, Reinke v. Chicago, M. St. P. & P. Ry., 252 Wis. 1, 30 N.W.2d 201 (1947); Bellrichard v. Chicago & N.W. Ry., 247 Wis. 569, 20 N.W.2d 710 (1945); Webster v. Roth, 246 Wis. 535, 18 N.W.2d 1 (1945); or (2) interfere with the management and control of the train by the crew to the extent that the crew cannot effectively avoid a collision even though they exercise reasonable care with respect to management and control upon sighting danger. Dombeck, *supra*. See also Kurz v. Chicago, M. St. P. & P. Ry., 53 Wis.2d 12, 19-23, 192 N.W.2d 97 (1971).

The Office of the Commissioner of Railroads may, upon petition, determine what maximum speed of a train over a crossing "is reasonably required by public safety and is consistent with the public need for adequate and expeditious passenger and freight service." Wis. Stat. § 192.29(1).