

Special Board of Adjustment 928

Award no. 487

Parties to the Dispute:

Brotherhood of Locomotive Engineers and Trainmen

and

National Railroad Passenger Corporation (AMTRAK)

(Donald J. Allen – Claimant)

Statement of Claim:

Claim presented on behalf of the Brotherhood of Locomotive Engineers and Trainmen on behalf of Passenger Engineer Donald J. Allen for rescinding the imposed discipline of “Termination of your employment with the National Railroad Passenger Corporation” as stated in the dismissal letter dated April 28, 2006, under the signature of Travis Hinton for General Superintendent Don Saunders, with full compensation for all time lost, full credit toward vacation entitlement, full entitlement for health and welfare benefits during the period held out of service, and the clearing of Claimant’s personal record as to any reference relative to the alleged violation.

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Special Board of Adjustment 928 has jurisdiction over the parties and the dispute involved herein.

At the time of the incident that led to the suspension in this matter, Claimant has 36 years of railroad experience, 19 of those years employed by the Carrier - 14 as a Passenger Engineer.

A review of the record shows that Claimant was working on March 31, 2006, as a Passenger Engineer on Train 304, from St. Louis to Chicago. He departed St. Louis with a crew consisting of a Conductor and an Assistant Conductor. The Assistant Conductor was removed at Lincoln and returned to St. Louis and the train proceeded onward towards the destination in Chicago. As it neared Chicago, Train 304 proceeded out of the Joliet Subdivision and in to the Freeport Subdivision, where it traveled for one and a half miles. CN/IC Rule 1107 for Work Project Protection was in effect from 8:00 pm until

5:00 am. Claimant did not seek permission to enter the area. Claimant discussed the Rule 1107 restriction with the crew during their job briefing prior to departure and admitted that he overlooked the restriction.

On April 3, 2006, Carrier advised Claimant in a Notice of Formal Investigation that he was to appear for an investigation into the above incident on April 7, 2006. Charge One alleged a violation of Canadian National Rule 1107 entitled "Work Project Protection" and Charge Two alleged a violation of Canadian National Rule 100 entitled "Rules, Regulations and Instructions."

The hearing was postponed and was held on April 20, 2006. The Carrier notified Claimant in a letter dated April 28, 2006 that he was guilty of the first presented charge, that the second charge was withdrawn, and that he was terminated.

The Organization claims that Rule 1107 was not violated because it is advisory in nature and does not require trains to stop before entering the specified limits. The train had authority to occupy the track and did not violate Rule 1107. Further, the Carrier compromised the inherent safeguards by removing a member of the crew prior to arrival at the destination and not requiring the crew to switch to Channel 72 while on the CN/IC track. Had the Carrier enforced the rule requiring the Switch to Channel 72, then the workcrew could have contacted the Claimant's train. Finally, the Organization argues that violation did not occur because the time that Claimant's train passed through the restricted area was not proved.

The Carrier counters that Claimant committed the infractions and admitted to proceeding through the work area without the permission of the employee in charge.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

After a review of the record, the Board finds that there were no procedural defects which void the discipline. The evidence established that the work zone restriction was in effect at the time of the incident. Claimant knew of the workzone restriction and discussed it with the crew during the job briefing. Claimant entered the restricted workzone without first contacting the employee in charge. Charge One was proven.

The Organization contends that the discipline was excessive in light of the offense and the Carrier's shared culpability caused by removing a crewmember – thereby

removing a safeguard who could alert the Claimant of the coming restriction at the Freeport Subdivision. Although qualified, Claimant was recent to the area and his wife was hospitalized the night before for a possible heart attack and cancer. The Carrier maintains that the discipline was appropriate to the offenses.

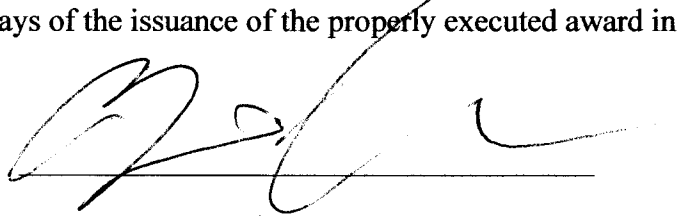
As stated above, the Board's role is limited to an appellate review and, under this limited review, we cannot disturb discipline unless it appears that the imposed discipline was arbitrary or capricious and constituted an abuse of the Carrier's discretion. In the instant matter, the termination was excessive when the facts, circumstances and Claimant's lengthy history are considered. After a review of the evidence submitted and the arguments before this Board by the parties, this Board makes the following finding: Claimant should be returned to work and restored to his prior position with seniority unimpaired.

While the facts in the instant matter and the Claimant's background offers mitigation, that mitigation is not absolute – Claimant did operate through a zone that had a work zone restriction. Needless to say, the potential for a catastrophic result in such situations is obvious. This is a serious offenses that warrants discipline, albeit discipline short of termination when the mitigation is considered. While termination is not warranted in the instant matter, neither is a make-whole remedy for these serious offenses. Claimant committed the offenses and some discipline is warranted. Accordingly, Claimant is returned to work with no backpay and with remedial training.

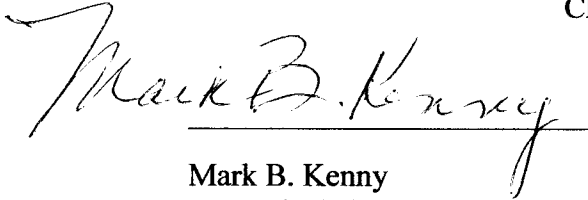
The return to work is effective within thirty days of the issuance of the properly executed award in this matter, subject to Claimant's successful passing of the appropriate remedial training, examinations for rules, drug and alcohol testing and other examinations that are normally required for Passenger Engineers. There is no award of backpay as part of this award.

Award:

Claim is sustained in part and denied in part pursuant to the above findings and is effective within 30 days of the issuance of the properly executed award in this matter.



Brian Clauss
Chairman and Neutral Member



Mark B. Kenny
General Chairman
BLET
Organization Member

Larry C. Hriczak
Director, Labor Relations
AMTRAK
Carrier Member

Dated this _____ day of _____ 2008