

**Special Board of Adjustment 928**

Award no. 473

**Parties to the Dispute:**

**Brotherhood of Locomotive Engineers and Trainmen**

**and**

**National Railroad Passenger Corporation (AMTRAK)**

**(Guy Perkins – Claimant)**

**Statement of Claim:**

Claim presented on behalf of the Brotherhood of Locomotive Engineers and Trainmen on behalf of Passenger Engineer Guy Perkins for rescinding the imposed discipline of: "termination, effective immediately" as stated in the discipline letter dated July 8, 2005, over the signature of District Superintendent – Transportation Steve Shelton, and with full compensation for time lost, full credit toward vacation entitlement, health and welfare credits during the period held out of work, and clearing of Claimant's record as to any record 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 was an Engineer and had been employed by the Carrier for approximately 18 years.

A review of the record shows that the following facts are not in dispute. Claimant was working as a Passenger Engineer on May 26, 2005, on AMTRAK Train No. 702 between Bakersfield, California and Sacramento, California. The train experienced an air problem and stopped on the main line. Claimant contacted the dispatcher and then took the train back to the Merced siding to deal with the air problem and clear the main track. He had to switch ends to enter the Merced siding and then to exit it after the air problem was corrected. While on the Merced siding, a train passed. Claimant left the Merced siding after regaining air pressure and performing the Class II standing brake test. He performed a running brake test at approximately 56 miles per hour after departing the Merced siding. Claimant stated that he did not perform a

running brake test at a speed below 20 mph and that he was in constant contact with the Conductor as they worked through the air pressure problem.

On May 30, 2005, Carrier advised Claimant in a letter that an investigation would be held on June 1, 2005, "to develop the facts and determine your responsibility, if any, in connection with the following [incident]. Claimant was notified that four charges would be investigated.

The hearing was postponed and was held on July 1, 2005. At the hearing, Claimant agreed that he performed the required Running Brake Test at a speed in excess of 20 mph. The Carrier notified Claimant in a letter dated July 8, 2005 that Charges 1, 2 and 4 were proven and that Charge 3 was not proven. Claimant was notified in a letter date July 8, 2005, from the District Superintendent that he was being assessed the discipline of "termination effective immediately."

The Organization argues that the three charged violations were not proved because the rule at issue, regarding the performance of running brake tests was ambiguous on its face. The Organization continues that, even if the running brake test rule is not ambiguous, the Claimant complied with the rule and a violation was not proven. The Organization continues that the violation of the job briefing rule contained in Charge 3 was procedurally faulty because the entire crew was not charged with a violation, just Claimant. The Organization further argues that even if Claimant did perform the running test at an incorrect speed, he nonetheless performed the running test and did not neglect to perform it. Claimant should not be terminated for such a violation and the discipline of dismissal is excessive.

The Carrier counters that Claimant committed the infractions and at the hearing he admitted to not performing the running test at a speed less than 20 mph. Because of the Claimant's admission at the infraction, the Carrier contends that the only issue for the Board is the imposed discipline.

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. Further, the Board finds that that the requirements of the Rule are not ambiguous. Claimant admitted that he did not perform the Running Brake Test at a speed less than 20 mph. The rule regarding Running Brake Tests is contained in Passenger Operations section P4.2.4 and provides, in pertinent part of section A, that Running Brake Tests are to be performed "after any standing brake test has been made." Claimant performed a Standing Brake Test after remedying the air problem while on the Merced siding and was therefore required to

perform a Running Brake Test. The procedure for the test is discussed in Section B of the above-cited rule in the section entitled "Test Procedure" and states that the test must be made "as soon as the speed of the train permits but not exceeding 20 mph." Further, Claimant testified that he was in "constant contact" with the Conductor, but not that he held the required job briefing.

The evidence established that Claimant did not perform a Running Brake Test at a speed under 20 mph and did not have the job briefing after switching ends of the train. Accordingly, this Board finds that there was substantial evidence in the record to sustain the three charges.

The Organization contends that the discipline was excessive in light of the offense, particularly where the evidence shows that Claimant performed a Running Brake Test, albeit at an incorrect speed, Claimant's lengthy service and Claimant's background. As stated above, the Board's role is limited to an appellate review. 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.

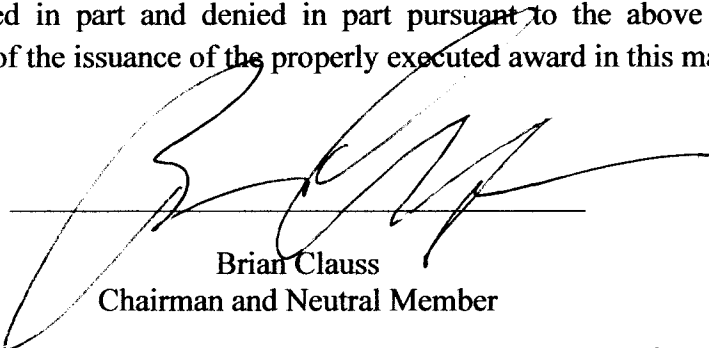
After a review of the evidence submitted and the arguments before this Board by the parties, this Board makes the following finding: Claimant should be returned to work and restored to his prior position with seniority unimpaired. The Organization contends that the discipline was excessive in light of no damage, no injury and Claimant's record. 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 and constituted an abuse of the Carrier's discretion when the facts, circumstances and Claimant's background are considered.

While the facts in the instant matter and the Claimant's background offers mitigation, that mitigation is not absolute – Claimant did perform the Running Brake Test at a speed in excess of 20 mph and did not hold the required job briefing. These are serious offenses that warrant 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.

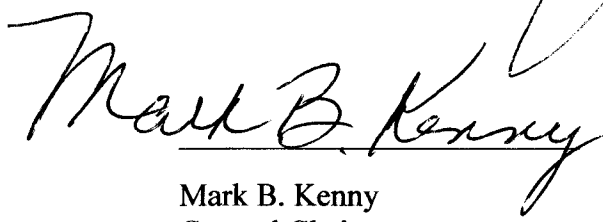
**Award:**

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.



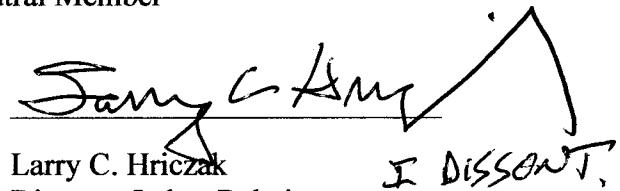
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Brian Clauss  
Chairman and Neutral Member



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Mark B. Kenny  
General Chairman  
BLET  
Organization Member



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Larry C. Hriczak  
Director, Labor Relations  
AMTRAK  
Carrier Member

Dated this 2<sup>ND</sup> day of JUNE 2008