

**Special Board of Adjustment 928**

Award no. 477

**Parties to the Dispute:**

**Brotherhood of Locomotive Engineers and Trainmen**

**and**

**National Railroad Passenger Corporation (AMTRAK)**

**(Gustavo Morales – Claimant)**

**Statement of Claim:**

Claim presented on behalf of the Brotherhood of Locomotive Engineers and Trainmen on behalf of Passenger Engineer Gustavo Morales for rescinding the imposed discipline of: "dismissed in all capacities" as stated in the discipline letter dated September 30, 2005, over the signature of General Superintendent Darryl K. Pesce, and restoration to service with full seniority and vacation rights unimpaired, with full compensation for time lost, full credit toward vacation entitlement and 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 16 years.

A review of the record shows that the following facts are not in dispute. Claimant was working on August 17, 2005 as a Passenger Engineer on Train 95, Engine 156. He operated his train past a stop signal at Arkendale, at MP CFP 72.2 on the CSX Baltimore Division. On August 19, 2005, Carrier advised Claimant in a letter that an investigation would be held on August 23, 2005, to develop the facts and determine his responsibility, in connection with the above incident. Claimant was notified that six charges would be investigated. In addition, Claimant was notified that the investigatory hearing would

be consolidated with the hearing pursuant to 49 CFR 240.307 regarding Revocation of Certification.

Claimant did not dispute the relevant facts and admitted the violation at the investigatory hearing.

The hearing was postponed and was held on September 20, 2005. The Carrier notified Claimant in a letter dated September 30, 2005 that he was guilty of the presented charges and that he was dismissed.

The Organization argues that the discipline is excessive because Claimant had only recently qualified on this route. He was new to the route and that should be considered in assessing the appropriateness of the discipline. When this factor is considered, the discipline of dismissal is excessive.

The Carrier counters that Claimant committed the infractions and at the hearing he admitted to passing the stop signal at issue. 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, Claimant admitted that he passed the stop signal. Accordingly, there was substantial evidence in the record to sustain the charges.

The inquiry before this Board next turns to the imposed discipline. The Organization contends that the discipline was excessive in light of the offense and Claimant's newness to the route. The Carrier maintains that Claimant's disciplinary history and the facts of the instant offense support the position that the discipline was not arbitrary, capricious or excessive.

As stated above, the Board's role is 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.

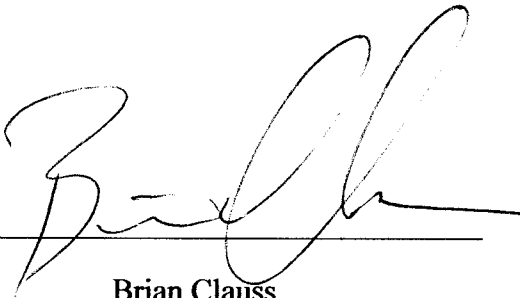
Claimant passed a stop signal. Given the importance of stop signals and the numerous awards addressing the seriousness of stop signal violations, there is no need for

a lengthy discussion by this Board about the gravity of this type of violation. Suffice it to say that stop signal violations are among the most serious violations in railroading and can lead to catastrophic consequences. Regardless of the time on the route, Claimant is obligated to stop before a stop signal.

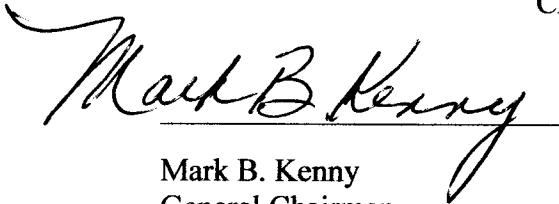
Claimant admitted the violations, suggesting to the Organization a contrite and cooperative employee. However, contrition and cooperation do not necessarily warrant leniency by the Carrier. Claimant's discipline history contains a 40 day suspension and restitution in 2001, and a reprimand and three 30 day suspensions in 2003. Given the Nature of the instant violations and Claimant's disciplinary history, this Board cannot find that the imposed discipline was either arbitrary or capricious. The imposed discipline did not constitute an abuse of the Carrier's discretion.

**Award:**

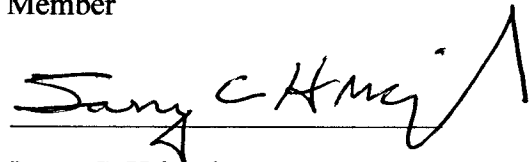
Claim is denied.



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 2<sup>ND</sup> day of JUN 2008