

Special Board of Adjustment 928

Award no. 479

Parties to the Dispute:

Brotherhood of Locomotive Engineers and Trainmen

and

National Railroad Passenger Corporation (AMTRAK)

(Juan Quijano – Claimant)

Statement of Claim:

Claim presented on behalf of the Brotherhood of Locomotive Engineers and Trainmen on behalf of BLE & T Local Chairman and Passenger Engineer Juan Quijano for rescinding the imposed discipline of: "termination of your employment with the National Railroad Passenger Corporation" by letter dated November 3, 2005, under the signature of General Superintendent Central Division Don Sanders (undersigned by Gary Israelson, Road Foreman). The Organization's claim further seeks: restoration to service with full seniority, vacation rights unimpaired, compensation for time lost, full credit toward vacation entitlement, full entitlement for health and welfare credits during the period held out of service, 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 12 years with approximately 22 years prior service with another Carrier.

On October 3, 2005, Carrier advised Claimant in two separate letters that an investigation would be held to develop the facts and determine his responsibility in connection with the above incidents. Claimant was charged with two separate violations, one for each grade crossing, and the matters were consolidated for hearing. Two charges were investigated for each crossing. In addition, Claimant was notified that that the investigatory hearing would be consolidated with the hearing pursuant to 49 CFR 240.307 regarding Revocation of Certification. The hearing was

postponed and was held on October 24, 2005. The Carrier notified Claimant in letters dated November 2, 2005 that he was guilty of the presented charges. Carrier notified Claimant in letters dated November 3, 2005 that he was assessed with a termination in each matter.

The Organization argues that the Claimant did not receive the notice of investigation in a timely manner. The Organization further argues that the other members of the crew received lesser discipline and such disparate and unequal treatment is fundamentally unfair. The Carrier's method of utilizing stop and protect orders at grade crossings serves to mitigate the discipline in the instant matter – a matter that the Organization maintains should have been considered as one event.

The Carrier counters that there was substantial evidence of the violations produced at the hearing. Claimant operated through the two grade crossings on the Joliet Subdivision, despite the Form C in effect requiring the train to stop before occupying the crossing and a crew member must be on the ground to warn traffic and signal the train. Claimant did not request and did not receive permission to operate through the restriction. Claimant committed the violations.

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.

A review of the record shows the following: Claimant was working on September 27, 2005 as a Passenger Engineer on Train 304 on the Union Pacific Joliet Subdivision. A Form C Track Bulletin was in effect referring to failures of automatic crossing devices at MP 93.5 and 94.71. The Form C required the trains to stop and provide warning at the grade crossings. Signal maintainers were working in the area and lifted the Form C for Train 300 and Train 303 in order to test crossing devices. The Form C was not lifted for Train 304. Train 304 operated through the grade crossings at MP 93.5 and 94.71 at or near maximum speed. Train 304 did not stop and protect either grade crossing.

After a review of the record, the Board finds that there were no procedural defects which void the discipline. The evidence shows that Claimant operated through the restrictions at MP 93.5 and 94.71. Accordingly, there was substantial evidence in the record to sustain the charges.

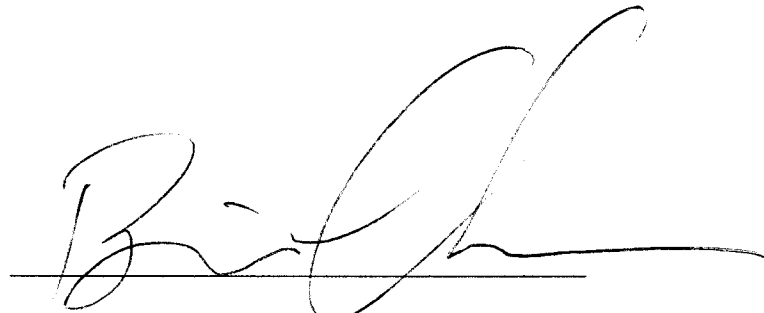
The inquiry before this Board next turns to the imposed discipline. The Organization argues that the discipline of termination is excessive in light of Claimant's length of service and his disciplinary history. When these factors are considered, the discipline of dismissal is excessive. The Carrier maintains 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. The other members of the crew received suspensions and not terminations and the Organization argues that this is prohibited disparate and unfair treatment. Claimant did not share the same disciplinary background as the other crew members. Given different disciplinary backgrounds, the argument that Claimant was improperly terminated is not persuasive.

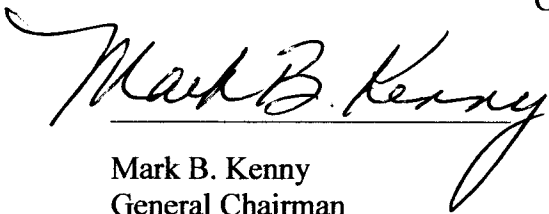
The Form C was issued because of problems with the automatic crossing devices. Claimant operated through grade crossings where the Form C required him to stop and protect the crossings. Given the importance of this Form C and the numerous awards addressing the seriousness of these type of violations, there is no need for a lengthy discussion by this Board about the gravity of these violations. Needless to say these violations are serious and could have produced catastrophic consequences. Claimant was obligated to stop and instead operated through the restrictions at or near maximum speed. 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:

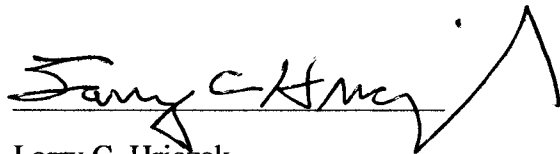
Claim is denied.



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 2ND day of JUN 2008