

Special Board of Adjustment 928

Awards no. 480 & 485

Parties to the Dispute:

Brotherhood of Locomotive Engineers and Trainmen

and

National Railroad Passenger Corporation (AMTRAK)

(J.D. Skyles – Claimant)

Statement of Claim:

Appeal from the discipline of Dismissal assessed Passenger Engineer J.D. Skyles.

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 been employed by Carrier as a locomotive engineer for approximately 16 years.

Claimant was charged with two separate offenses in two unrelated incidents. In Docket 480, Claimant is charged with violations related to the improper placement of wide body train cars in the Yard that allowed the train car to be struck by a passing train.

In Docket 485, Claimant is charged with violations related to striking a blue flag protection and derail while making yard moves and also with the failure to report the derail that was lying on the ground.

A review of the record shows that Claimant was working as a Locomotive Engineer in the Seattle Coach Yard during both incidents. Claimant was appropriately noticed of the investigations and the matters went to hearing in a timely manner. Following the hearings, Claimant was notified that he was guilty of the presented charges and that he was terminated.

The Organization claims that Claimant did not commit the offense in Docket 480 because it is a close-clearance yard and there was nothing that indicated the wide equipment was known to be extra wide. The Claimant relied upon the Conductor.

The Organization claims that Claimant did not commit the offense in Docket 485 because there was an electrician had removed the derail earlier and when recovered, the derail appeared to be locked in the off position. Further, the orange paint on the locomotive that supposedly matched the paint on the derail was purely speculation where a yard locomotive can have a wide variety of paint and marks from the hard use of the yard.

The Carrier counters that Claimant committed the infractions and the only issue is whether the discipline was appropriate.

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 Claimant committed the offenses in Docket 480 and Docket 485. Claimant knew or should have known the equipment he was moving and he should have known the location of the derails and blue flag protection.

The Organization contends that the discipline of termination was excessive in light of the offense and the Carrier's shared culpability in Docket 480, where the wide body equipment was not properly marked and the crew not properly trained in that type of equipment, and in Docket 485, where the light on the blue flag protection and derail was not functioning despite it being nighttime.

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. While the importance of properly placing train cars in the yard and protecting employees with blue flag protection cannot be overemphasized, the facts and circumstances surrounding the wide body equipment in a crowded yard and a non-functioning light on the derail do offer some mitigation.

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.

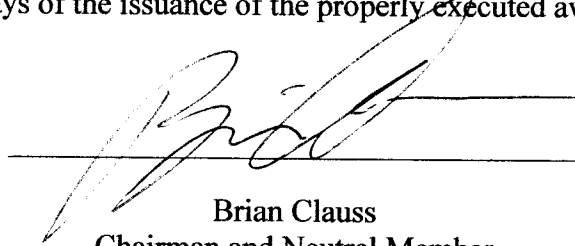
While the facts in the instant matter and the Claimant's background offers mitigation, that mitigation is not absolute – Claimant did operate through blue flag protection and improperly placed a train car in the yard. Needless to say, the potential for a catastrophic result in such situations is obvious. 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.

This Board would be remiss if it did not comment on the nature of the infractions in the instant matter. The Board has reviewed the record and heard the strong arguments of the parties. This Board can plainly see evidence of sloppy yard work and Claimant is reminded that further offenses could result in termination from service with the Carrier.

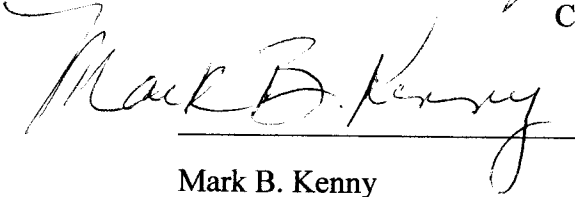
The return to work is effective within thirty days of the issuance of the properly executed award in this matter, subject to Claimant's successful passing of the appropriate remedial training, examinations for rules, drug and alcohol testing and other examinations that are normally required for Passenger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

Award:

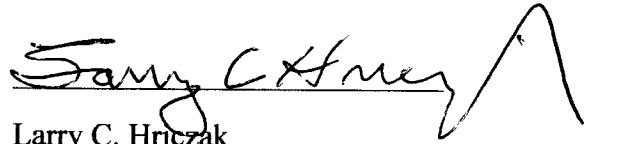
Claim is sustained in part and denied in part pursuant to the above findings and is effective within 30 days of the issuance of the properly executed award in this matter.



Brian Clauss
Chairman and Neutral Member



Mark B. Kenny
General Chairman
BLET
Organization Member



Larry C. Hriczak
Director, Labor Relations
AMTRAK
Carrier Member

I DISSENT.

Dated this 28TH day of OCTOBER 2008