

Special Board of Adjustment 928

Award no. 488

Parties to the Dispute:

Brotherhood of Locomotive Engineers and Trainmen

and

National Railroad Passenger Corporation (AMTRAK)

(Denise Saylor – Claimant)

Statement of Claim:

Claim presented on behalf of the Brotherhood of Locomotive Engineers and Trainmen on behalf of Passenger Engineer Denise Saylor for rescinding the imposed discipline of Termination Effective Immediately, dispensed by the discipline letter dated March 28, 2006, under the signature of Jay Commer, Superintendent of Commuter Operations, Caltrain. The Organization's claims further seeks: 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 expunging of Claimant's personal 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 10 years.

A review of the record shows that the following facts are not in dispute. Claimant was working on January 2, 2006, as a Passenger Engineer on Train 437, from San Jose to San Francisco. She was working with a Conductor and an Assistant Conductor. Claimant made a full service reduction as she approached the Stop signal at CP Common. The front of the locomotive passed the signal by approximately 25 feet. Claimant was in the circuitry for the grade level crossing and the gates were down. Claimant backed the train approximately 25 feet and cleared the circuitry for the crossing gates. There was no crew member on point during the reverse move.

On January 6, 2006, Carrier advised Claimant in a letter that an investigation would be held on January 12, 2006, to develop the facts and determine her responsibility, in connection with the above incident. Claimant was notified that four charges would be investigated. Charge One alleged a violation of Rule 10.1 entitled "Authority to Enter CTC Limits." Charge Two alleged a violation of Peninsula Caltrain District Timetable No. 2 Signal Aspects and Indications Rule 9.1.15 entitled "Signal – Stop." Charge Three alleged a violation of Peninsula Caltrain District Timetable No. 2, Rule 6.5 entitled "Handling Cars Ahead of Engines." Charge Four, alleging a violation of Peninsula Caltrain District Timetable No. 2, Rule 6.4.2 was withdrawn at the investigation.

The hearing was postponed and was held on March 20, 2006. The Carrier notified Claimant in a letter dated March 28, 2006 that she was guilty of the presented charges and that she was terminated.

The Organization claims procedural errors, including that the Carrier witness did not have first hand knowledge of the incident. Further, the Conductor and Assistant Conductor did not testify, the event recorder download was not presented and the locomotive brakes were not tested. In addition, the Hearing Officer was biased and did not afford Claimant a fair hearing. As to the substantive issues, the Organization argues that the signal in question is part of the problem because it is a known trap for engineers. Although the Claimant passed the red signal by 25 feet, the fault is not entirely hers. Moreover, although she backed the train without a crew member on point, it was a short train and her mirrors were sufficient for the short shove move.

The Carrier counters that Claimant committed the infractions and admitted to getting by the stop signal and backing the train without a crewmember on point. Further, the Claimant regularly travels that route, is familiar with the signals and the signal at CP Common has been in that location for up to two years prior to the instant incident. The Carrier maintains that there were no procedural errors.

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. Claimant did not claim a defect with the brakes and the record shows that the download was reviewed by the Organization at the hearing to confirm that Claimant was at or below the speed limit as she approached the signal at CP Common.

Not introducing the download or testing the brakes does not rise to the level of procedural error. Further, the crew was interviewed and Claimant admitted running past the stop and backing up the train without a crew member on point. Their written statements indicated that they did not participate in the reverse move. Accordingly, not calling the other crew members to testify does not rise to the level of procedural error. Further, the hearing officer afforded Claimant a fair hearing.

The evidence established that Claimant passed the Stop signal at CP Common and then backed the train without a crewmember on point. 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, Claimants background and the Speed Signal system problems on this line. The Carrier maintains that the discipline was appropriate to the offenses. 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.

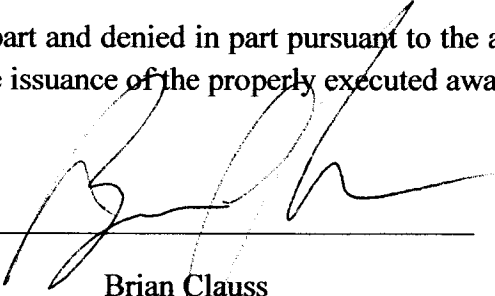
After a review of the evidence submitted and the arguments before this Board by the parties, this Board makes the following finding: Claimant should be returned to work and restored to her prior position with seniority unimpaired. The Organization contends that the discipline was excessive in light of 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 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 go past a Stop signal and performed a reverse move without a crew member on the point. 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.

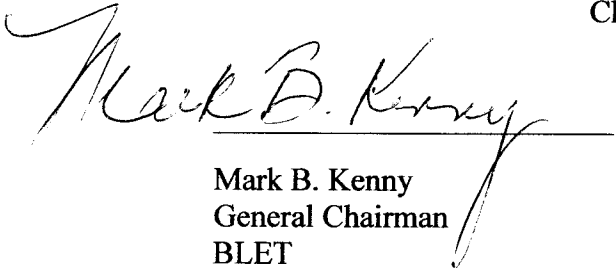
The return to work is effective within thirty days of the issuance of the properly executed award in this matter, subject to Claimant's successful passing of the appropriate remedial training, examinations for rules, drug and alcohol testing and other examinations that are normally required for Passenger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

Award:

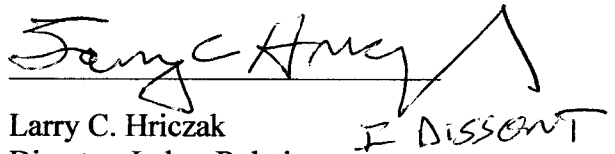
Claim is sustained in part and denied in part pursuant to the above findings and is effective within 30 days of the issuance of the properly executed award in this matter.



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 30th day of APRIL 2008