

Special Board of Adjustment 928

Award no. 491

Parties to the Dispute:

Brotherhood of Locomotive Engineers and Trainmen

and

National Railroad Passenger Corporation (AMTRAK)

(B. Hager – Claimant)

Statement of Claim:

Claim presented on behalf of the Brotherhood of Locomotive Engineers and Trainmen on behalf of Passenger Engineer Brian Hager (“Claimant”) for rescinding the imposed discipline of: ”termination of your employment with the National Railroad Passenger Corporation, as stated in the discipline letter dated November 16, 2006, under the signature of General Superintendent Don Saunders, 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 personal record as to any reference 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 a Passenger Engineer and had been employed by the Carrier for over 19 years.

A review of the record shows that the following facts are not in dispute. Claimant was working as a Passenger Engineer on October 9, 2006, on AMTRAK Train No. 8 in the Tomah Subdivision of the Canadian Pacific Railroad. He properly stopped short of the stop signal at mile Creek West and proceeded after the Dispatcher gave authorization. The Dispatcher advised Claimant to stop short of Mile Creek East (MP 210.30 and Claimant would again be talked past the signal. Claimant did not stop at Mile Creek East and passed a stop signal without authority.

On October 12, 2006, Carrier advised Claimant in a letter that an investigation would be held on October 13, 2006, “to develop the facts and determine your responsibility, if any, in

connection with the following [incident]. Claimant was notified that six charges would be investigated.

The hearing was twice postponed and was held on November 7, 2006. At the hearing, Claimant acknowledged that he passed Mile Creek East without contacting the Dispatcher. The Carrier notified Claimant in a letter dated November 15, 2006 that Charges 3,4,5 and 6 were proven and that Charges 1 and 2 were withdrawn. Claimant was notified in a letter dated November 16, 2006, that he was being assessed the discipline of termination from service.

The Organization argues that the charged violations were not proved. First, the Notice of Formal Investigation was not received by Claimant. Second, the Dispatcher allowed the Work Gang Foreman to disconnect the switches, thereby removing the Dispatcher's control and placing them in control of the Foreman. This action violated the applicable Rule and contributed to the confusion. Claimant was presented with a long list of crossing protection orders, speed restrictions and a Gang Protection Bulletin. Third, the Assistant Conductor and Conductor ignored their responsibilities and did not monitor the situation or assist Claimant.

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 stopping for the stop signal. 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 the requirements of the applicable Rules are not ambiguous. Claimant was required to stop at Mile Creek East and be talked through by the Dispatcher. Claimant did not stop at Mile Creek East. The evidence established that Claimant did not stop. Accordingly, this Board finds that there was substantial evidence in the record to sustain the charges.

The Organization contends that the discipline was excessive in light of the offense, particularly where the evidence shows that there was a number of crossing protection orders, 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.

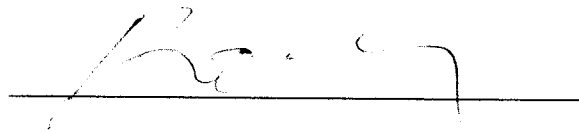
After a review of the evidence submitted and the arguments before this Board by the parties, this Board makes the following finding: Claimant should be returned to work and restored to his prior position with seniority unimpaired. The Organization contends that the discipline was excessive in light of 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 not stop at the twelfth stop and protect on this trip. This is a 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 this serious offense. Claimant committed the infraction and some discipline is warranted. Accordingly, Claimant is returned to work with no backpay and with remedial training.

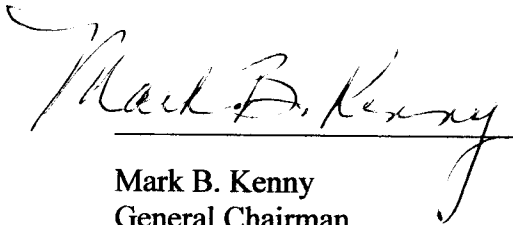
The return to work is effective within thirty days of the issuance of the properly executed award in this matter, subject to Claimant's successful passing of the appropriate remedial training, examinations for rules, drug and alcohol testing and other examinations that are normally required for Passenger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

Award:

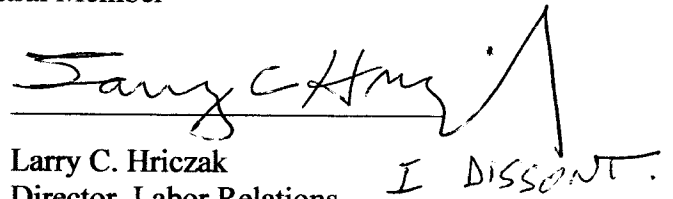
Claim is sustained in part and denied in part pursuant to the above findings and is effective within 30 days of the issuance of the properly executed award in this matter.



Brian Clauss
Chairman and Neutral Member



Mark B. Kenny
General Chairman
BLET
Organization Member



Larry C. Hriczak
Director, Labor Relations
AMTRAK
Carrier Member

I DISSENT.

Dated this 11th day of JULY 2008