

PUBLIC LAW BOARD NO. 5191

Case No. 89
Award No. 89

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Norfolk Southern Railway Company

STATEMENT OF CLAIM:

Claim of Engineer T. L. Filer, Piedmont Division, Washington, for restoration to service with seniority/vacation rights unimpaired, pay for all time lost and remove the discipline and all references to this incident from his personal work record in connection with allegedly passing the Northbound Stop Signal at Rio, VA, MP 109.9, July 18, 2006, while serving as Engineer on Train 88MP118. The investigation was conducted August 3, 2006. Article 31, Schedule Agreement.

OPINION OF BOARD:

On July 18, 2006, Claimant was called as Engineer to report for service at Montview Yard, Lynchburgh, Virginia. After reporting, Claimant's crew was taxied to MP 172.2, where they were scheduled to pick up their Train 88M. The train consisted of three Units, with 67 loaded coal cars, 9506 tons, 3534 feet in length. Upon assuming control of their train, the crew, consisting of Claimant, Conductor and Operations Supervisor Trainee (Management Trainee) performed an A-13 brake test after releasing the hand brakes. The train then proceeded north on Main No. 1, receiving all clear signals until they reached Charlottesville, Virginia MP 112.3, where they were given an Approach signal. The following signal at MP 111.8 was also Approach and the crew called both signals by radio, this was verified. It was stated a Job Briefing was discussed after Southbound Train 227 passed by on Main No. 2. Coming out of a one degree left hand curve, Train 88M then encountered a Stop signal at Rio, MP 109.9. The Claimant went into full dynamic brake, made a full service application and then a second and came to a complete stop 795 feet past the Stop signal and through the power switch. The Claimant chose not to put the train in emergency because he was still coming out of the curve at 36 mph; as the event recorder tapes verified.

This incident was immediately reported to the appropriate officials, who set about the task of ascertaining why Train 88M had gone through the Stop signal at Rio. The mechanical department performed an A-6 brake test on the train and there were no problems. The signal system was tested and no exceptions taken. There were two trains that were operating in this territory, as Train 228 came out of single track at Rio, going on Main No. 2, approximately six minutes before Train 88M reached the same point from Main No. 1 to single track. The power switch at Rio was not in correspondence for Main No. 1, as it has been set for Train 228, and they already cleared Rio when 88M went by the signal and into the power plant. The event recorder tapes were downloaded and showed Train 88M went from 11 mph to 36 mph in 1.8 miles, just before the Claimant made the braking decisions recounted above.

The Carrier's investigation suggested the reason for Train 88M passing the Stop signal at Rio was improper train handling and failure to observe speed restrictions required when operating with an Approach signal. The Claimant and crew were charged with passing a Stop signal at Rio on July 18, 2006, given a trial, where the evidence referenced above was presented and explained by Carrier's witnesses. Following trial, Claimant was found guilty of the charge and dismissed from the service. The Organization's appeal for leniency was rejected by Carrier, so the dispute was presented to this Board and Claimant notified of his right to attend the Board's hearing.

The Claimant admitted to the violation of the Operating rules, so the only issue left for the Board is to decide the merits of Petitioner's contention that the punishment was too severe. As the Organization is aware, the Board does not have the right to extend leniency in a dispute. That is the prerogative of the Carrier. We can however, look at all the surrounding facts and decide whether, given the particular circumstances, the amount of discipline was excessive. We noted several items that we found significant in our deliberations. The first was that Claimant had been alerted by a Carrier official to the problem of signal compliance just before boarding his engine on the date in question. That is on the negative side for Claimant. On the positive side, the event recorder tapes were introduced at the trial and Carrier's witness conceded that Claimant's train handling was in compliance at the first Approach signal and again at the second signal, his train speed went from 24 mph to 11 mph. At that point, within a range of 1.8 miles the speed accelerated from 11mph to 36 mph. In the meantime the Conductor alerted him twice to the fact they were running on an Approach signal and should be prepared to stop at the next signal. Both of these facts must be considered on the negative side. In short, the Claimant's handling of his train on this date, raises considerable

doubt as to whether he is properly qualified to operate such heavy trains on the road.


In our opinion, Claimant should be reinstated without pay for time lost, except as specified herein. As a condition of returning to service, Claimant may be required to successfully complete, at the Carrier's discretion, up to 30 days remedial training, paid at his regular rate, with respect to train handling and signal compliance. The Board will retain jurisdiction to consider any dispute that may arise with respect to the Carrier's administration of this training or the Claimant's ability to successfully complete same. If Claimant is ultimately deemed unable to satisfy these conditions, his claim for reinstatement will be denied

FINDINGS: Claim disposed of in accordance with the Opinion

AWARD: The Board realizes that is an unusual decision, so we will retain jurisdiction to ensure our decision is fully implemented.

ORDER: The Carrier will place this Award into effect within thirty days of the effective date.


Dated in Norfolk, Virginia, this 12th day of June, 2007.



W. F. Euker, Neutral Member



S. R. Budzina, Carrier Member



M. J. Ruef, Organization Member

Carrier File: ZE-WASH-06-01
Organization File: ZE-WASH-06-01

