

AWARD NO. 4

Case No. 4

Organization File No.

Carrier File No. EE-ROR-06-53

PUBLIC LAW BOARD NO. 6945

PARTIES ) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN  
          )  
TO )  
      )  
DISPUTE ) NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of Virginia Division Engineer M. L. Burton for reinstatement with all benefits restored and pay for all time lost due to investigation held September 22, 2006 to determine the facts and place responsibility, if any, in connection with "... (1) passing a stop signal at MP N290.6, Pelton, VA, without authority at approximately 11:11 a.m., September 6, 2006, and (2) exceeding medium speed and excessive speeding while operating on an approach signal between MP 293.6 and MP 290.6 from approximately 11:08 a.m., and 11:11 a.m., September 6, 2006, while operating train 97ZV5 work train.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 14, 2006, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

The essential facts in this case are not in dispute. While working as engineer on Train 97Z5 on September 6, 2006, Claimant went through a stop signal without authorization at Pelton, Virginia. Prior to reaching this signal, Claimant had an approach signal at MP 293, and properly called this signal over the radio. It was subsequently discovered that after passing the approach signal,

Claimant failed to reduce his speed to 30 miles per hour, as required. Instead, he maintained the train's speed at 37 mph until he put the train in emergency just prior to reaching the stop signal. As a result of this incident, Claimant and his conductor were directed to attend a formal investigation at which they were charged with passing the stop signal without authority and excessive speeding. Following the investigation, Claimant was dismissed from service. His conductor received a thirty day suspension.<sup>1</sup>

The Organization does not dispute the charges against Claimant. At the investigation, Claimant testified that he took full responsibility for this incident. Thus, the only question before this Board is whether the disciplinary action taken by the Carrier was excessive. As we noted in Award No. 2, we will assess this case based upon the circumstances particular to it, rather than accepting the Carrier's position that all offenses of this nature warrant dismissal. To be sure, several of the Awards cited by the Carrier note that dismissal may not be appropriate in all cases where there are mitigating circumstances.

We distinguish this case from those presented in Award Nos. 2 and 3, though, because the instant case involves two violations, both of which are serious offenses. Even though he called an approach signal, which required him to reduce the speed of his train to medium speed (30 mph), Claimant continued to operate at 37 mph. Furthermore, the purpose of the approach signal is to alert the engineer that the next signal is likely to be a stop signal. Thus, he should have been prepared to

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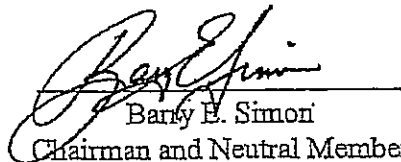
<sup>1</sup>At the investigation, it was established that the conductor was in the bathroom when Claimant called the approach signal and did not hear him. Upon returning to the locomotive cab, he asked Claimant what the signal was and Claimant replied that it was clear.

stop his train before passing the signal. Claimant's only explanation was that he lost his train of thought. He acknowledged that there was nothing going on that might have distracted his attention.

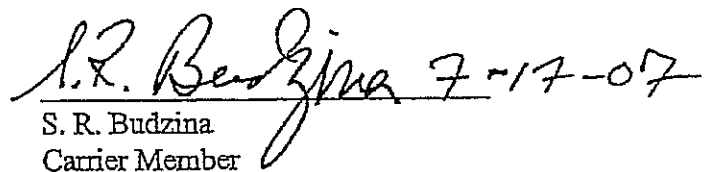
The record reflects that Claimant was hired by the Carrier as a brakeman in 1991, and established engineer seniority in 1996. In his fifteen years of service, he had been disciplined three times. His most recent discipline, in 1998, was a thirty day suspension for engaging in unsafe work practices by applying brakes when the brake valve displayed a blue signal.

We believe that the Carrier should have given some consideration to the fact that Claimant had fifteen years of service. As we did in Award Nos. 2 and 3, we will direct that Claimant be reinstated to service, but with the condition that this is to be considered a last chance to demonstrate that he can comply with the Carrier's rules and operate in a safe manner. To this end, any violation of the Carrier's rules with respect to speed or signals within the first twenty-four months after his return to work will constitute cause for permanent dismissal. The claim for compensation for time lost is denied.

AWARD: Claim sustained in accordance with the above Findings.

  
Barry E. Simon  
Chairman and Neutral Member

  
M.J. Ruef  
Employee Member

  
S. R. Budzina  
Carrier Member

Dated: June 30, 2007  
Arlington Heights, Illinois

