

## PUBLIC LAW BOARD NO. 6952

### PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers  
and Trainmen

AWARD NO. 7  
CASE NO. 7

-- and --

Iowa, Chicago & Eastern Railroad

### STATEMENT OF CLAIM:

“Claim of T. Jensen and A. Mehlhouse for reinstatement to service with pay for all time lost including investigation procedures with all vacation rights restored and credits toward Railroad Retirement.”

### FINDINGS:

This Public Law Board No. 6952 finds that the parties are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By individual letters dated August 21, 2006, the Claimants, Locomotive Engineer Alvin Mehlhouse and Assistant Engineer Tracy Jensen, were notified by the Carrier that they had been found responsible for violation of the Carrier's rules and assessed the discipline of termination of employment. The body of both letters of termination were identical in substance and stated:

A review of the facts surrounding the incident that occurred at approximately 0505 hours on July 27, 2006, while the Locomotive Engineer [and Assistant Engineer in the case of Mr. Jensen] on the FMCKC-16, reveals that you failed to obey the rules, take the safe course of action, were careless of the safety for yourself and others, and grossly negligent by not immediately stopping to inspect your train after notification by the trackside warning detector at MP 207.3 of hot box situation with your train.

The formal investigation session that was conducted to investigate this matter on August 3, 2006 revealed a violation of General Code of Operating Rules 1.1, 1.1.1, 1.6, 1.47, 6.29, 6.29.1, and Timetable Special Instructions Item 5.

As a result of your non-compliance of rules and failure to acknowledge or accept responsibility for your actions, your employment with Iowa, Chicago & Eastern Railroad is hereby terminated.

This is a difficult decision, but one we believe is warranted based on the facts of this case.

Your last check will be withheld until all Iowa, Chicago & Eastern Railroad company property and equipment are returned to a Nahant MTO at 2300 Railroad Avenue, Davenport, IA. Contact MTO at 563/441-7553 to arrange return of all company issued equipment.

Sincerely,  
S/ John P. Deming  
Terminal Superintendent

The Organization appealed the discipline and it is now properly before this Board for adjudication.

We have considered the Organization's procedural arguments and we find that a basis does not exist to set aside discipline on the grounds asserted by the Organization.

We have carefully considered the entire record before this Board. Engineer Mehlhouse and Assistant Engineer Jensen operated their 6800 foot train, FMCK-26, past the Failed Equipment Detector (FED) located at MP 207.3 at approximately 5:00 A.M. on July 27, 2006. After the entire train had proceeded past the detector, near MP 209, the crew received an audible warning that the train had a defect at axle 187. After receiving the warning the crew conducted a job briefing, considering what the train was carrying (grain hopper cars), the length, tonnage, walking conditions, the number of crossings in the area and other factors. There are twenty crossings and the Town of Fairport between

the detector and the location where the train ultimately stopped, MP 214.3 with 12 crossings and the Town of Fairport located subsequent to MP 209. Engineer Mehlhouse testified that it took several minutes to conduct the job briefing because he was operating the train controlling speed and the slack and his conductor was attempting to ascertain the information that they were putting out for the job briefing. He testified that at some point they decided to pull the train ahead to inspect it at MP 214 (Tr-128). At approximately MP 210.3, Claimant Jensen had a conversation with the dispatcher releasing the train's first warrant and notifying the dispatcher of the warning from the FED and getting permission to make a backup move in order to drop off and inspect the train. The transcript of this discussion with the dispatcher stated in part:

MR. JENSEN: Yeah. The detector got us so we're going to have to drop off and inspect and asking for permission for a backup move. Over.

DISPATCHER: All right, sir. You have permission to make a backup move there. 6079, do you think you'll get to – no, you won't get back as far as (inaudible). Over.

MR. JENSEN: No, we won't get back as far as (inaudible), okay.

DISPATCHER: Okey dokey. Let me know what you found.

MR. JENSEN: Back up the move and we'll give you a call and let you know what it is. Over. give you c

DISPATCHER: Roger, operations out.

At this point the crew testified that they did not know the nature of the defect. And, Communication Technician J.E. Fecke testified about his inquiry with Signal Maintainer Ortiz about the “207.3 Detector” and normal gripes of train crews about false readings of this detector after crews had stopped and inspected their trains (Tr-48).

Shop Manager Sieverding testified that he was driving in his private automobile at approximately 5:20 A.M. when he observed the train which was at approximately MP 213 (Tr-13) and he observed an orange glow which to him indicated a journal or bearing being hot. Later, he testified that he observed the orange glow in approximately the MP 211 and 212 areas (Tr-18). He testified that he called the Assistant Chief Dispatcher in Sioux Falls and the train started stopping at that point. The Shop Manager testified that after the train stopped at the 214.3 crossing he and Mr. Jensen stood next to each other while the train pulled by them to the 187 axle (some additional 47 car lengths).

Rule 6.29 Inspecting Trains states in part:

**Trackside Warning Detectors and Inspections**

Crew members must be aware of trackside warning detectors and signals from persons inspecting their train. Stop the train immediately for an inspection when any the following conditions exist:

- A crew member receives a stop signal.
- A trackside warning detector indicates a train defect.

Timetable No. 2, Special Instructions 5, Trackside Failed Equipment Detectors, contains examples of detector messages transmitted by FEDs and the actions required by train crews. Relevant language follows:

<b>Detector Message</b>	<b>Train Crew Action</b>
*                    *	*                    *
“...First hot box right side XXX”	Stop Train: inspect near indicated axle

While the crew believed they did stop their train in accordance with Timetable No. 2, Special Instructions 5, at the point in their judgment, after considering all factors in their job briefing, where they could best inspect the train, MP 214.3, and the point turned out to be the same point of their stopping the train when they were subsequently informed of

the actual hot journal as a result of the Shop Manager's action, the crew did not stop the train "immediately" as required by Rule 6.29.1. Accordingly the Carrier has met its burden of proof regarding this critical Rule violation.

The Carrier asserted in its submission that the crew was disciplined as a result of ignoring a Trackside Warning Detector (Carrier Submission, pg 1); the Carrier asserts that had not the Shop Foreman been in a position to observe the train and discover the hot journal, Claimants no doubt would have caused a severe and costly derailment (Carrier's Submission, pg 16). The evidence is crystal clear that the crew did not ignore the FED warning, and that Carrier's assertions as stated are completely devoid of merit. The crew had informed the dispatcher that the "detector got us" and they obtained permission for a back up move to drop off and inspect the train and they obligated themselves to call the dispatcher to let the dispatcher know what they found.

In fact the investigation yielded valuable information for the Carrier regarding training and testing of train crews on actions to be taken on Trackside Warning Detector warnings. Engineer Mehlhouse testified that he had never been tested (on FEDs); and he testified that FEDs have never been part of the engineer recertification curriculum (Tr-131). The Designated Supervisor of Locomotive Engineers testified that he could not confirm Trackside Warning Detectors and Inspections are part of the curriculum of the engineer's recertification program because that function had been moved to Sioux Falls (See Tr-133). So that there can be absolute clarity and consistency, the Carrier may choose to amend the Timetable No. 2, Special Instructions 5, Train Crew Action to state: "Stop Train [Immediately]: inspect near indicated axle." And the Shop Manager testified

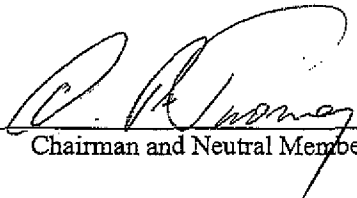
forthrightly about his own self-questioning about allowing the crew to pull the train by him and Mr. Jensen some 47 cars at MP 14.3 to get to the affected axle 187.

We have considered the entire record and find that the Carrier has proven violation of GCOR Rule 6.29.1 and derivitively Rules 1.6 and Time Table No. 2, Special Instructions 5. We have considered the specific reasons expressed by the Carrier for the discipline in this case in the letter of discipline and we find that any discipline beyond a sixty day actual suspension for the two Claimants is clearly excessive. The Claimants shall be returned to service with all rights unimpaired with back pay for time lost after the sixty day suspension period.

AWARD

As per Findings.

Order: The Carrier is required to comply with this award within thirty days.

  
\_\_\_\_\_  
Chairman and Neutral Member

\_\_\_\_\_  
Employee Member

\_\_\_\_\_  
Carrier Member

Dated: \_\_\_\_\_