

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7057

Parties to Dispute:

BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS

-and-

NORFOLK SOUTHERN RAILWAY  
COMPANY

OPINION AND AWARD

CASE NO. 4

Claimant M. L. Monks

STATEMENT OF CLAIM:

"Claim of Conductor M. L. Monks, Central Division, CNOTP 1st District, 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 her personal work record in connection with alleged excessive speeding while operating on an Approach Signal indication between MP 69.5 and MP 72.0, and passing the Stop Signal at location MP 72.2 without authority, and failure to properly perform an A14 brake test as required at MP 65.8, while serving as Conductor on Train 236T809 on September 10, 2006. The investigation was conducted September 27, 2006. Article 31 Schedule Agreement."

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

Claimant was serving as Conductor on September 10, 2006 when both she and Engineer Montague were required to put the train into emergency 2200 feet from a Stop signal at Akers, MP 72.2. The train nevertheless overshot the Stop by 1410 feet. After the Signal Department determined that the signal system was functioning properly and that the signal at Akers had displayed a Stop, a reenactment was performed using Claimant's train. Based upon that recreation and its review of the entire incident, Carrier concluded that the crew was operating at excessive speed at several points on September 10 and as a result had passed the Stop signal at MP 72.2 without authority. It also found that Claimant

had failed to perform an A14 brake test on her train as required at MP 65.8 that same day. By letter dated October 4, 2006, Carrier dismissed Claimant from her employment.

The Organization submitted this challenge, progressed the claim in the usual manner on the property and, following declination by Carrier's highest Officer designated to handle such matters, appealed it to the Board for final adjudication.

There is no serious dispute concerning the factual background leading to Claimant's dismissal. Claimant went on duty at 1:50 p.m. on September 10, 2006. After departing Cincinnati, OH, she and her crew set off one car at Delaplain and then continued southbound toward Danville, KY where they were advised they would meet Train 264 at Akers, MP 72.2. They then encountered an approach signal at Georgetown, MP 69.4, requiring the crew to reduce speed to medium--30 MPH or less--and be prepared for a stop at the next signal. The train was moving at 45 MPH when it passed the approach, and over the ensuing quarter mile its speed dropped to 43 MPH. Engineer Montague then increased his throttle position from 3 to 8 to ascend a slight grade; and speed meanwhile dropped to 38 MPH over the next half-mile. By the time it reached MP 71.76, however, approximately 2200 feet from the Stop signal at MP 72.2, the train's speed had increased to 54 MPH.

Claimant's sight vision to the Stop signal at this point was 1069 feet. Noticing the excess speed, both she and Engineer Montague put the train into emergency, apparently simultaneously. When it went by the Stop signal, according to Claimant's own testimony, it was still moving at approximately 25 to 30 MPH. She immediately called the dispatcher as the train passed the signal to notify him of the problem and request that he stop all trains ahead of hers.

Pursuant to Carrier's Rule 34, Claimant was jointly responsible with her Engineer for observing and complying with the indication of each signal and for communicating with fellow crew members regarding signals, track conditions and train movement. Additionally, Rule 106, jointly entrusts train safety and observance of rules to both the Engineer and the Conductor. Claimant was fully aware that the reason for the Stop at Akers, MP 72.2, was to meet an opposing train, and in fact called that fact to the attention of her Engineer. She states that the reason she failed to observe the approach was that she

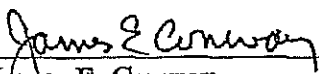
had been on her cell phone communicating with Centralized Yard Operations concerning the one-car set-off at Delaplain.

Claimant's disregard for critical operating rules may have had very serious consequences had the train scheduled to be stopped at Akers arrived at that point on time. In light of the seriousness of the offense, therefore, Carrier has established solid grounds for severe discipline. Unlike the involved Engineer, however, whose operating record included prior discipline for excess speed shortly before this incident, Claimant's service record since being promoted to Conductor in September, 2000 was spotless, revealing previous service on the Safety Committee as well as a letter from supervision in January, 2006, commending her on safe work habits. Moreover, in this instance she both called the signal and reacted promptly to put the train into emergency after recovering from the distraction of her phone discussion with the dispatcher. Additionally, the record reflects noteworthy candor and openness with Carrier's investigating officials and a similarly forthright responsiveness during examination and cross-examination at the investigation. In sum, Claimant admits she allowed herself to get "sidetracked," admits she made a mistake as a result, makes no excuses for her negligence and appears to have taken away serious learning from the experience.

Under the circumstances presented, the Board concludes that Carrier's objectives would be met by the imposition of discipline short of dismissal. Accordingly Claimant's termination will be converted to a suspension without backpay. Carrier will extend an offer to Claimant to resume her prior position with seniority intact upon satisfaction of its normal return-to-work requirements as soon as feasible but not later than thirty (30) days from the date of execution of this Award.

#### A W A R D

The Claim is partially sustained. Claimant's dismissal is converted to a disciplinary suspension. Carrier shall restore her to service in accordance with the foregoing Opinion not later than thirty (30) days following execution of this Award by a majority of its Members.


  
James E. Conway  
Chairman and Neutral Member

OPINION AND AWARD

PUBLIC LAW BOARD NO. 7057 – Case No. 4



Marcus J. Ruef  
Employee Member



P. G. Piserchia  
Carrier Member

Dated at Great Falls, VA

June 22, 2007