

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7057

Parties to Dispute:)	
)	
BROTHERHOOD OF LOCOMOTIVE)	<u>OPINION AND AWARD</u>
ENGINEERS)	
-and-)	CASE No. 6
)	
NORFOLK SOUTHERN RAILWAY)	Claimant R. R. Guthrie
COMPANY)	
.....)	

STATEMENT OF CLAIM:

"Claim of Engineer R. R. Guthrie, Central Division, Chattanooga, for restoration to service with seniority/vacation rights unimpaired, pay for all time lost and removal of all references to this incident from his personal work record in connection with allegedly passing the Stop signal at Milepost AGS 0.0 without permission while serving as Engineer on Yard Assignment TC70, performing Hours of Service relief on Train 734AA16, October 18, 2006. The investigation was conducted November 10, 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 Guthrie was dismissed by letter dated November 16, 2006, after passing a Stop signal at approximately 10:30 p.m. on October 18, 2006 at Chattanooga Yard while operating on Yard Assignment TC70 relieving trains that had expired under governing Hours of Service rules. The other members of his crew were Conductor R. W. Goins and Locomotive Engineer Trainee ("LET") G. M. Chambers.

It is substantially undisputed that as Claimant was instructing Chambers within the terminal limits he allowed Chambers to take the controls of Train 734AA16 North. Operating in what all witnesses describe as heavy fog, Claimant's train was travelling at approximately 20 MPH. when it passed an approach signal. The engine tapes establish that the train, weighing 17,000 tons, was still traveling at 19 MPH when it was placed into

emergency some 432 feet from the Stop signal. That action failed to halt it in time and the train ultimately stopped 68 feet past the Stop.

A brake inspection by Carrier's mechanical department subsequently established that the brakes on the entire train were working properly. It was further determined that the signal system was functioning properly and that the only signal displayed for Claimant's train at Mile AG 5.00 was a Stop signal. The crew was removed from service, subjected to mandatory drug testing and directed to participate in a formal investigation held on November 10, 2006. Based upon a review of evidence adduced at that hearing, by letter dated November 16, 2006 Claimant and his crew were found guilty of passing the Stop without permission and subsequently terminated.

Carrier, citing substantial arbitral precedent including prior awards of this Referee and stressing the obvious safety reasons underpinning the rule, contends that as one of the most serious violations that can be asserted against an engine crew, running a red signal warrants dismissal. In further support it references two Stop signal incidents on the property, both resulting in substantial losses, in which the dismissals of the crews involved were upheld. Lastly, it emphasizes that on September 26, 2006, Carrier had announced and distributed a new policy, effective immediately, again stressing the seriousness of Stop signal violations and putting all employees on notice that crews found guilty of such infractions could be subject to dismissal. In the instant case, Carrier argues, Claimant was required to ensure that his train was operated at a speed allowing it to stop at the next signal and that rather than excusing the incident, the prevailing fog dictated reduced speed. Further, Claimant was familiar with the area, had operated similar trains in the vicinity numerous times and was accountable for seeing that LET Chambers operated the train safely.

In defense of the Claimant, the Organization argues that dismissal is an overly harsh penalty for a single infraction by a long service employee with a satisfactory service record. Additionally, mitigating factors are present in this instance. Carrier's action failed to recognize the extremely foggy weather conditions and the fact that a train sitting on an adjacent track blocked Claimant's view of his location.

Based upon a careful review of the record before the Board, we conclude that while Carrier's policy is entitled to substantial deference in such situations, and notwithstanding Claimant's responsibility for operating his train in a manner that fell short of his employer's standards, in this instance the mitigating circumstances identified by the Organization were factors in the incident and must be taken into account.

It is universally acknowledged that in determining an appropriate penalty for employee misconduct a number of relevant factors should be taken into consideration. Those factors have been articulated so frequently they are beeswaxed: the nature of the offense; questions of intentionality, maliciousness or inadvertence; frequency of infraction; employee's length of service and past disciplinary record; consistency of the penalty with those imposed on other employees for the same offense; clarity with which the employee was on notice or had been warned about the conduct in question; any mitigating circumstances surrounding the offense; adequacy of alternative sanctions, and like considerations.

Standing alone, none of the several mitigating factors featured in this incident operates to excuse Claimant's action. In combination, however, they make a strong case for alleviating the penalty imposed. First, Claimant was hired in 1974, promoted to engine service in 1978. He was thus a 28-year employee when dismissed. Second, over that long career he had compiled a satisfactory employment record. Third, the infraction occurred under inclement and inhospitable weather conditions, in heavy fog with intermittent rain and in an area featuring no lights or other prominent landscape markers providing a frame of reference. Fourth, the position of another train on a parallel track further obscured the crew's view of the Stop signal. Fifth, in addition to operating under challenging weather conditions, Claimant was responsible for the additional workload of instructing a Locomotive Engineer Trainee on the date of the incident. His train of 124 cars weighed 17,000 tons, and with his LET at the controls Claimant plausibly asserts that he momentarily lacked the usual "feel" for his train.

The record contains no showing that Claimant lacks the ability to perform at a satisfactory level or safely perform his assigned duties in the future. At the same time, it is equally clear that Claimant had been warned about the severity of running stops and that

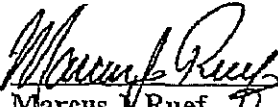
even accounting for the difficult visual conditions, had Claimant properly instructed his LET regarding the need to maintain a train speed appropriate to operating conditions this incident could have been avoided.

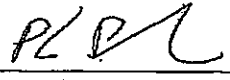
Consequently, while back pay is, in our judgment, not appropriate under the circumstances, restoration to service with seniority intact following this lengthy suspension would appear to represent an alternative sanction that will effectively further the Carrier's objectives.

A W A R D

The Claim is partially sustained. Claimant shall be restored to his former position without backpay but with seniority intact.


James E. Conway
Chairman and Neutral Member


Marcus J. Ruef
Employee Member


P. G. Piserchia
Carrier Member

Dated at Great Falls, VA
