

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 928

BROTHERHOOD OF LOCOMOTIVE ENGINEERS)
and) Case No. 427
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)) Award No. 427

Martin H. Malin, Chairman & Neutral Member
M. B. Kenny, Employee Member
L. C. Hriczak, Carrier Member

Hearing Date: December 12, 2003

STATEMENT OF CLAIM:

Claim of Amtrak Passenger Engineer E. Lucero ("claimant") for the rescinding of the discipline imposed of "termination from service, effective immediately" as stated in the decision letter of July 17, 2003, under the signature of District Superintendent-Pacific Division Jay Commer, and restoration to service with seniority and vacation rights unimpaired, with full compensation for time lost, full credit toward vacation entitlement, health and welfare benefits during the period held out of work, and clearing of Claimant's personal record as to any reference relative to the alleged violation.

FINDINGS:

Special Board of Adjustment No. 928, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On April 30, 2003, Claimant was directed to report for an investigation on May 7, 2003. The notice charged Claimant with violating General Code of Operating Rules, Rules 6.31, 1.47 and 2.14. It specified that on April 28, 2003, while working Train 534, Claimant failed to comply with a radio speed restriction of 10 mph at MP 9.00 on the Martinez Subdivision of the Union Pacific Railroad. The hearing was postponed to and held on July 8, 2003. On July 17, 2003, Carrier advised Claimant that he had been found guilty of the charges and dismissed from service.

The Organization has raised a number of procedural objections. We have considered them carefully and find that they do not warrant overturning the discipline.

The record reflects that on the date in question, Claimant received a radio instruction to operate at a restricted speed of 10 mph at MP 9.00. Claimant testified that he operated at 25 mph. A Union Pacific Welder Helper observed Claimant's train and estimated his speed at 35 - 40 mph. The Road Foreman of Engines testified that the event recorder showed Claimant's speed at 66 mph. Although the evidence did not agree on Claimant's speed, all sources of evidence, including Claimant's own testimony, agreed that Claimant exceeded the restricted speed of 10 mph. The Organization contends that other individuals were also at fault and that their fault contributed to Claimant's operating at excessive speed. However, the actions or inactions of others do not change the fact that Claimant was aware of the speed restriction and that Claimant exceeded the speed restriction by a significant margin. Carrier clearly proved the charges by substantial evidence.

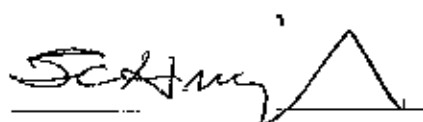
We turn to the penalty assessed. On August 1, 2001, Claimant was assessed a thirty-day suspension for failing to observe a Form B speed restriction. On November 18, 1998, Claimant was assessed a thirty-day suspension for failure to comply with a yellow signal to reduce speed. This was Claimant's second significant operating rule violation in less than two years and his third such violation in five years. In light of the seriousness of the offense and Claimant's prior record, we cannot say that the penalty of dismissal was arbitrary, capricious or excessive.

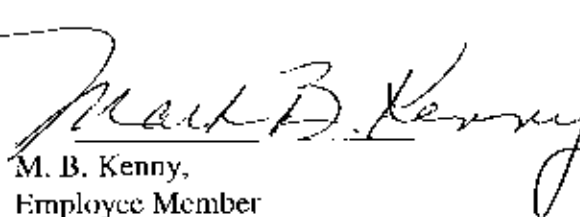
The Organization contends that Claimant was treated disparately from the Conductor who received a five day actual and ten day deferred suspension. However, there is no evidence that the Conductor's prior disciplinary record was comparable to Claimant's. Therefore, we are unable to find such disparate treatment as would provide a basis for setting aside the discipline.

AWARD

Claim denied.


Martin H. Malin, Chairman


I. C. Hriczak,
Carrier Member
3-26-04


M. B. Kenny,
Employee Member

Dated at Chicago, Illinois, March 11, 2004.