

**NATIONAL MEDIATION BOARD  
SPECIAL BOARD OF ADJUSTMENT NO. 928**

BROTHERHOOD OF LOCOMOTIVE ENGINEERS )  
 ) Case No. 436  
and )  
 ) Award No. 436  
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) )

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

Hearing Date: April 30, 2004

**STATEMENT OF CLAIM:**

Claim of Amtrak Passenger Engineer M. A. Bowers ("Claimant") for the rescinding of the discipline imposed of "termination of your employment with the National Railroad Passenger Corporation in all capacities effective immediately" as stated in the decision letter dated October 30, 2003, over the signature of Superintendent Road Operations – Central Division, Travis Hinton, and restoration to service with full seniority and vacation rights unimpaired, with full compensation for time lost, full credit toward vacation entitlement and 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 October 13, 2003, Claimant was directed to report for an investigation on October 18, 2003. The notice charged Claimant with violating NORAC Operating Rules 94, 135, 297, 297a and 956; Amtrak Central Division General Order No. 2003-SI Parts D, 1 & 2; and AMT-5 Rule 5010. It specified that on October 9, 2003, while operating train #40, at milepost YG 91 of the NS Youngstown Line, Pittsburgh Division, Claimant failed to stop short of a stop board and entered the work limits of a track foreman without first contacting the track foreman for permission. It further specified that Claimant failed to hold a proper job briefing with his crew.

The hearing was postponed to and held on October 23, 2003. On October 30, 2003, the

Hearing Officer found that all charges were proven. Based on these findings, Carrier advised Claimant that he had been dismissed from service.

There is no significant dispute in the facts. On the date in question, Claimant and his crew held a job briefing at which they discussed restrictions set forth in a Norfolk Southern bulletin order but all members of the crew missed the work limits restriction in the bulletin order. The restriction was listed considerably out of the order of the other entries in the bulletin order. Specifically, it was listed at line 006, when it should have been listed at line 021. Consequently, the crew did not discuss the restriction during the job briefing. Claimant also did not notice the approach board as he approached the restricted area. He did observe the stop board and immediately went to handle off, applying maximum air short of going into emergency. Claimant testified he did not put the train into emergency because he could see that the track ahead of him was clear and he did not want to jeopardize the train. Claimant was unable to stop the train short of the work limits, and actually traveled past two pieces of equipment before stopping. The NS foreman approached Claimant to discuss the incident. The NS foreman reviewed the bulletin order in Claimant's possession and, initially, was unable to find the restriction. After looking carefully, he located it. Every witness who addressed the issue agreed that they had not previously seen, in any bulletin order, a restriction as far out of order as the restriction at issue.

There is no question that Carrier proved the charges by substantial evidence. Claimant should have reviewed the bulletin order carefully, line by line in case there were restrictions that were of chronological order. Because the crew did not discuss the restriction, they did not have a complete job briefing. Claimant did not observe the approach board and did not stop short of the work limits.

The critical question is the severity of the discipline. In contrast to Claimant who was dismissed, the other members of the crew were afforded informal handling and thirty-day suspensions. Furthermore, the error in the manner in which the restriction was listed in the NS bulletin order clearly contributed to the violations. Considering all of the relevant factors, we find that the penalty of dismissal is excessive and Claimant should be afforded one last chance to demonstrate that he can be a careful and safe employee who complies with all operating and other rules. Claimant shall be reinstated to service with seniority unimpaired but without compensation for time held out of service.

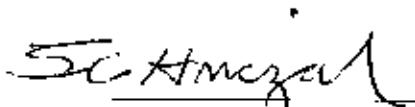
#### **AWARD**

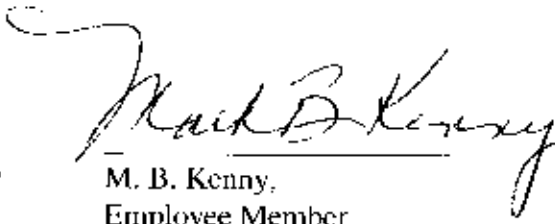
Claim sustained in accordance with the Findings.

**ORDER**

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto

  
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Martin H. Malin, Chairman

  
L. C. Hriczak,  
Carrier Member *I DISSENT.*

  
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M. B. Kenny,  
Employee Member

Dated at Chicago, Illinois. August 27, 2004.