

**SPECIAL BOARD OF ADJUSTMENT 1063**

**PARTIES TO THE DISPUTE:**

AWARD NO. 671  
CASE NO. 671

Brotherhood of Locomotive Engineers and Trainmen

--and--

Norfolk Southern Railway Company

**STATEMENT OF CLAIM:**

Claim on behalf of Harrisburg Division Engineer R.B. Winter for restoration to service and payment for all time lost in connection with 1) excessive speeding at various locations between Corning, NY and Buffalo, NY; 2) operating his train exceeding 30 MPH with a failed two-way end of train device; 3) failure to wear safety eyewear; 4) failure to wear hearing protection; and 5) failure to complete the ME65 calendar day inspection form. These incidents occurred August 24, 2005 while he was assigned as crew member on Train 309H724 August 23, 2005.

**FINDINGS:**

This Special Board of Adjustment No. 1063 finds that the parties herein are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By letter dated November 9, 2005 the Claimant, Mr. R. B. Winter was notified by the Carrier that he was assessed the discipline of dismissal from all service following a formal investigation concluded on October 27, 2005. The Organization appealed this discipline and the matter has been progressed to this Board for adjudication.

We have carefully considered each of the procedural assertions of the Organization and we conclude that the record does not support setting aside the discipline on procedural grounds. Based on the extensive period before the Board, we are compelled to conclude that the charges against Engineer Winter were proven by substantial evidence of record.

Buffalo Terminal Superintendent Moore's testimony and exhibit 23 established that Mr. Winter exceeded 30 mph with a failed two-way end-of-train device, and the record established that he reached a speed of 57 mph at MP SR 392.8 – CP Aiden, which location had a speed restriction of 50 mph. Bulletin No. 001 A states the well known reality in the railroad industry that speed restriction are necessarily imposed to protect the safety interests of employees and the public; and the bulletin points out that engineers are well aware of past incidents in the railroad industry which have involved loss of life, injury, property damage and service interruptions attributable to speed. Speeding is simply unacceptable.

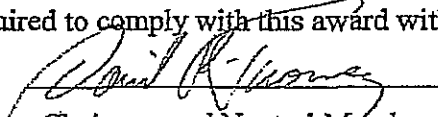
We believe that the long period of time the Claimant has been out of service may well have had a corrective effect instilling in him an understanding that Carrier's operating and safety rules must be strictly complied with. However, based on the proven rules violations in this case and Mr. Winter's much less than satisfactory personal service record, we require the following:

1. Mr. Winter shall be returned to service without back pay on a probationary status for a period not to exceed ninety days following his reinstatement.
2. During this period he shall undergo retraining as a locomotive engineer under the supervision of Road Foreman R. Hohman, whose judgment as to whether or not Mr. Winter satisfactorily completes such training should be of significant weight. Mr. Winter shall be compensated at the engineer's rate of pay during this retraining period.
3. Should the Claimant be disqualified by Mr. Hohman during the probationary period, he shall be considered permanently dismissed for all service, with a right to appeal the disqualification for review by this Board after expedited handling of the matter on the property. Jurisdiction is retained in this case to resolve any dispute that may arise in the application of this award and to provide a review of a disqualification, if necessary. The Board will apply a substantial evidence of record standard in the case of a review of disqualification.
4. Upon successful completion of the retraining period, Mr. Winter's full seniority rights shall be restored.

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: 3-2-07

