

SPECIAL BOARD OF ADJUSTMENT NO. 928

AWARD NO. 176
NMB CASE NO. 176

PARTIES TO THE DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

- and -

NATIONAL RAILROAD PASSENGER CORPORATION

STATEMENT OF CLAIM:

Claim of Passenger Engineer H. H. Miller and Assistant Passenger Engineer R. M. Treadwell for removal of the discipline assessed of the thirty (30) day suspension including all lost compensation and benefits associated therewith for allegedly entering the CSXT South Main Track without authority at Birmingham, AL, on June 5, 1993

Outline of Alleged Offense

Alleged violation of CSX Transportation Mobile Division Timetable Number 3, Page 66, Section 175.255, in that while you were assigned as Engineer of Amtrak Train 20, June 5, 1993, you allegedly entered the CSX Southbound Main Track at Amtrak Birmingham Station, MP 391.6, at approximately 1616 CSXT (*sic*), which is between Black Creek and 13th Street, without permission from the operator at Boyles.

OPINION OF BOARD:

The essential facts of this case are not in dispute. Claimants were assigned as an engineer and an assistant passenger engineer at Amtrak's Birmingham, Alabama Crew Base. On June 5, 1993, Claimants were operating as Engineer and Assistant Engineer, respectively, on Amtrak's Train No. 201. At approximately 3:00 p.m., Claimants were given permission by the Boyles Operator on the CSXT radio frequency to enter the CSXT South Main at the hand throw switch located at the north end of Number One Track at the CSXT Birmingham Depot. While pulling from #1 Track onto the South Main they were contacted by the Norfolk Southern 27th Street yardmaster and told to stop the train

movement and back Train No. 20 back into the #1 Track at the CSXT Depot so that Amtrak Train #19 could use the South Main to enter #2 Track at the at the CSXT Depot. Mr. Treadwell contacted the CSXT Boyles Operator, advising him of the situation. The Boyles Operator instructed Train No. 20 to report clear of the main track when in the clear in #1 Track and it did so. Once Amtrak Train #19 passed by, Treadwell informed the Boyles Operator, and told him that the Amtrak Carman had lined the #1 Track switch to the CSXT South Main for Train #20's subsequent departure.

The record indicates that the Boyles Operator then responded in words or substance - - "I'll see about getting you a signal." There is no signal governing the entrance to the main track. Accordingly, it appears the Operator was referring to a signal approximately 1/4 of a mile beyond the point at which Train #20 was entering the South Main at the depot. Train #20 then proceeded to the signal in question, which was red, and stopped. The record indicates that Claimants attempted to contact the Boyles Operator without success, but were then contacted via radio by the Operator concerning the location of Train #20. Claimants relayed the information and were shortly given a proceed signal at 24th street, routing Train #20 through the New Way Track onto the Norfolk Southern at 27th Street.

Amtrak filed charges on Claimants on June 11, 1993 and withheld them from service. The CSXT held an investigation following which they were notified that Amtrak was assessing them each a thirty day actual suspension. The discipline was appealed by the Organization and was subsequently progressed in the usual manner, including conference on the property, after which it remained unresolved.

At the outset, the Organization has maintained that Claimants were not afforded a

fair and impartial hearing. There is no evidence on the record before this Board to support that assertion.

With respect to the merits of this case, the Board has made a thorough review of the very lengthy (176 pp.) transcript. That review indicates that the discipline assessed is excessive. Throughout the transcript it is apparent that there was a dearth of clarity in transmissions from the Operator at Boyles. In view of the fact that the Claimants knew the configuration of the South Main Track, it was not unreasonable for them to assume that they had the Operator's permission to proceed. As evidence of their knowledge, they stopped the train properly at the stop signal 1/4 mile from the entrance onto the South Main Track. At worst Claimants may be guilty of failing to force the Operator to clarify what he meant by "I'll see about getting you a signal," since they knew the first signal was actually 1/4 mile along the South Main Track, rather than where Track #1 joined the South Main Track. Beyond that, Carrier has not met its burden of persuasion regarding negligent operation of the Train #20. Consequently, the assessment of a thirty day suspension is utterly unwarranted. Accordingly, the Board finds that the discipline assessed shall be reduced to a five day suspension, and Claimants shall be compensated for the remaining twenty-five days of the suspension assessed and served.

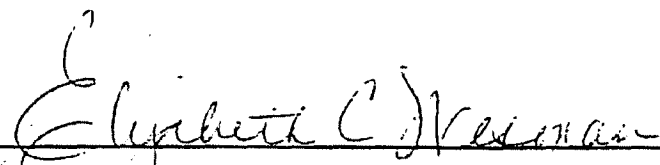
The Board notes that on October 18, 1993, both Claimants signed a waiver relinquishing their rights to any claim against CSX Transportation "account being barred from operating on CSX Trackage" from the date they were withheld until such time as they were permitted to operate on CSX trackage. Carrier has asserted without contradiction that there were no positions within Claimants' work zone to which they could have displaced

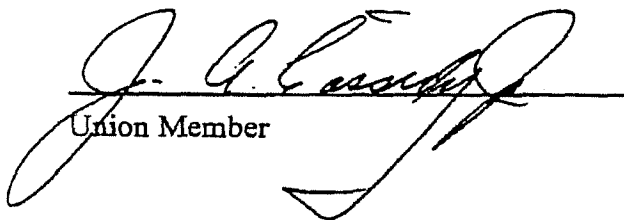
which did not operate over CSX trackage. Accordingly, the Carrier protests that it cannot be held responsible for the Claimants' lost wages until they were allowed to return to work following their thirty-day actual suspension. Since the Board has found that the original suspension was excessive, by extrapolation, the Claimants were deprived of work over the CSX trackage unnecessarily for the remaining twenty-five days of their suspension. However, the Carrier (Amtrak) did not bar the Claimants from operating on CSX trackage. Further, such a bar does not automatically entitle to displacement rights on other, Carrier-owned trackage with no contiguous CSX trackage.

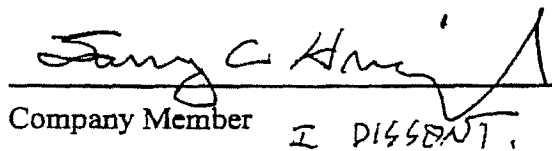
The dilemma posed by disqualification of employees of one carrier by another carrier when there is connecting trackage is problematic, and has been the topic of heated debate on this and other Boards and at labor-management conferences. Despite what one might perceive as the "equities" in this situation, the Board has no jurisdiction to make the Carrier assume a liability flowing to another carrier.

AWARD

Claim sustained to the extent set forth in the above Opinion.


Elizabeth C. Wesman, Chairman


Union Member


Company Member I DISSENT.

Dated 7/7/00