

SPECIAL BOARD OF ADJUSTMENT 1063

Case No. 197  
Award No. 197

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

and

Norfolk Southern Railway Company  
Norfolk and Western Railway Company, et al.

STATEMENT OF CLAIM:

Claim of Engineer N. Ravizee, Alabama Division, Birmingham District, for restoration to service with seniority/vacation rights unimpaired, and pay for all time lost in connection with alleged violation of Norfolk Southern Operating Rules 90 and 109, while serving as Engineer on Train 221A1, October 9, 1996. Investigation conducted October 18, 1996. Article 31, Schedule Agreement.

OPINION OF BOARD:

Claimant Engineer was charged with exceeding maximum authorized speed at approximately 6:45 a.m. on the morning of October 9, 1996, while operating Train 221A1 in the vicinity of Milepost 784.9 near Henry Ellen. A slow order had been issued under Dispatcher's Bulletin 3629, which placed the 10 m.p.h. slow order into effect at 8:01 a.m. on October 8, 1996. Claimant received the slow order prior to going on duty at 11:45 p.m. on October 8th, and passed the slow order area at approximately 6:45 a.m. on October 9th. The order had been discussed between the two crew members and it was their mistaken impression the order was effective on October 9th at 8:01 a.m.

When Carrier learned of the incident, it notified Claimant to appear for a formal investigation on a charge of exceeding the maximum authorized speed at the time and date mentioned above. Following trial, Claimant was found guilty of the charge and dismissed from the service. Petitioner appealed the discipline in the usual manner on the property and then to this Board. Claimant was notified of the Board's hearing date and granted the right to attend.

During the course of the formal investigation Claimant admitted he mistakenly thought the slow order was effective at 8:01 a.m. on October 9th rather than the previous day, and that

was the reason for the overspeed, not a deliberate or intentional violation of the Operating rules. The Organization also asserted the Bridge Foreman could have alerted Train 221, when he saw them approaching at excessive speed. The Bridge Foreman answered saying he gave that idea consideration, but was afraid the Engineer might put the train in emergency and tear up the bridge, so he waited until the train had practically cleared, before asking him if he had a slow order. This was a judgment call, so we find no mutual dereliction from that occurrence.

It is apparent Claimant's crew was responsible for the slow order violation in this instance. However, it is also clear it was caused by an oversight, not an intentional or flagrant disregard of the operating rules.

Consequently, we feel Claimant's long service record merits consideration, so we will reinstate him to service with seniority unimpaired, but without the compensation claimed for time held out of service.

FINDINGS:

The Agreement was violated.

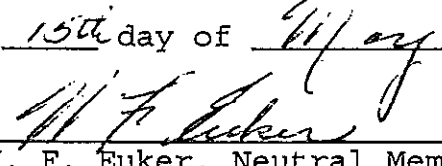
AWARD:

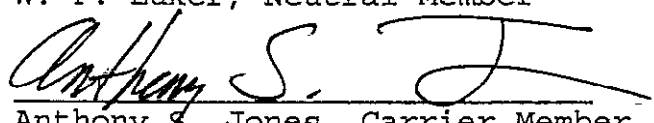
Claim sustained as set forth in the Opinion.

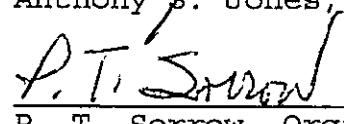
ORDER:

The Carrier will place this Award into effect within thirty (30) days of the effective date.

Dated at Norfolk, Virginia, this 15th day of May, 1997.

  
W. F. Euker, Neutral Member

  
Anthony S. Jones, Carrier Member

  
P. T. Sorrow, Organization Member