

SPECIAL BOARD OF ADJUSTMENT NO. 6199

In the Matter of the Arbitration Between:
CSX TRANSPORTATION, INC.

and

NMB Case No. 44
Claim of T. W. Levins
20-Day Actual Suspension;
Violation of Train Handling
Rule 3.2, Section 3

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF THE CLAIM: T. W. Levins, Engineer on the PD Sub-Division, claim due to discipline of 20-day actual suspension for violating Train Handling Rule 3.2, Section 3. Request is for the discipline to be canceled, removed from Claimant's personal file and that Claimant be paid for all time lost.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant(s) employees within the meaning of the Railway Labor Act, as amended; that the Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein, and that the parties were given due notice of the hearing, which was held on April 16, 2001, at Jacksonville, Florida. Claimant was not present in the hearing. The Board makes the following additional findings:

Claimant, an employee with five years of seniority, worked as a Locomotive Engineer stationed at Carrier's Jacksonville, Florida A&WP Sub-Division. On August 31, 2000, Claimant was assigned to operate a train from Myrtlewood to Selma, Alabama. When he arrived at the train, Claimant noticed that both locomotives were facing in the wrong direction to move to Selma; the long nose of both were facing forward. The instrument panels, controls and engineer's chair would be facing backwards in this configuration. Claimant brought this situation to the attention of Trainmaster R. D. Jackson, and objected to making the run since it was unsafe to travel the 62 miles to Selma with the engines facing in reverse. Additionally, Claimant pointed out to Mr. Jackson that he was unfamiliar with that route; this would further compromise the safety of operating the train with the engines in reverse. Mr. Jackson, who is not a qualified Railroad Engineer, stated it was not a safety hazard to operate a train with the locomotive's long nose forward, informed Claimant that there were no other engines available, and directed him to make the trip. Claimant agreed, but only after informing Mr. Jackson that he would make the trip at a

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reduced speed and would report the situation to his local organization chairman, since it was against the CSX/BLE Collective Bargaining Agreement to operate a train with the engines facing in reverse.

At approximately 10:30 p.m., Mr. Jackson received notification that Claimant had injured his neck after slack had run out of the train. After his injury, Claimant had managed to run the train to in Thomston, Alabama where there was a phone and the crew could call for help. Mr. Jackson sent a substitute crew to take over operation of the train. Claimant was taken to the nearest hospital where he was treated. He remained out of work under medical supervision until December 7, 2000.

Foreman of Engines J. J. Brierly inspected the locomotives on Claimant's train, as is routine after any incident. He discovered that the event recorder in the lead locomotive had not been turned on before leaving Myrtlewood. Mr. Brierly did download the recorder in the trailing locomotive which was in operation during the run. The download printout showed that at 8:25 p.m. Claimant moved the throttle from position 3 to idle and a second later applied the dynamic brakes. Train Handling Rule 3.2, Section 3 requires that the engineer wait for ten seconds from the time the throttle is set to idle, before activating the dynamic brakes.

Subsequent to these findings, the Carrier suspended Claimant from service pending an investigation. On September 8, 2000, the Carrier issued a letter instructing Claimant to attend an investigative hearing to determine his responsibility in disabling the event and speed recorders in the lead locomotive and handling his train in violation of Train Handling Rule 3.2, Section 3. The letter also revoked Claimant's FRA Certification pending a hearing concerning his alleged disabling of the event and speed recorders in the lead locomotive. After a number of postponements, a disciplinary hearing was conducted on January 4, 2001. In the course of the hearing, the Carrier relied on the trailing locomotive's event recorder readout in its attempt to establish a violation of Rule 3.2, Section 3.

Claimant testified during the hearing that running the train with the long nose pointing forward was a difficult task. The

instruments and controls were behind him. He had to constantly turn his head back to monitor the gauges and operate the controls. The constant turning of his head put a strain on his neck and affected his concentration, he testified his visibility forward was limited to the left side of the locomotive. At one point the slack of the train ran out and the resulting jolt injured his neck, causing excruciating pain. He does not remember when and how he applied the dynamic brakes during the incident in question because he was "delirious with pain". The conductor on that run, R. H. Hardy confirmed that Claimant had to assume a very difficult position, constantly turning his head and neck to look forward while operating the train. Claimant's forward visibility was limited to his side of the cockpit; Mr. Hardy had to look forward from his side to forewarn Claimant of upcoming whistle markers and other warning signals. Mr. Hardy was concerned about how Claimant could conduct the train if he had to be left alone in the cockpit momentarily. He confirmed that after the injury Claimant was suffering intense pain. He managed to coax Claimant to continue traveling to the outpost in Thomston where they could summon help.

Foreman of Engines J. J. Brierly provided testimony on behalf of the carrier. Nonetheless, during his testimony, Mr. Brierly agreed that Claimant's inexperience with the route between Myrtlewood and Selma could have contributed to his misuse of the brake. An unexpected grade or turn could have prompted the sudden application of the dynamic brakes prior to waiting the required ten seconds after the throttle was set on idle. Additionally, Mr. Brierly agreed that some of the readings in the trailing locomotive's event recorder were erratic. Finally, Mr. Brierly concurred that the physical and mental strain caused by running a locomotive in reverse for a considerable distance could have affected Claimant's performance in handling the train. Engineer S. W. Bass, who replaced Claimant for the trip from Thomston to Selma, testified that he too suffered from neck pains as a result of operating the locomotive in the reverse direction, although his pain was not as severe as that experienced by Claimant.

Witnesses for both the Carrier and the Organization testified that it is uncommon to operate a train with the long nose of the locomotive forward. The Organization points out that Article 14 of the 1976 CSXT Agreement proscribes the operation of a locomotive in

reverse except in emergency situations or when performing operations such as backing up when coupling cars in the yard. Additionally, Organization Exhibit N, a sworn declaration by W. J. Lockwood, Assistant Vice President for Transportation, CSX, dated July 8, 1992, makes reference to operating a locomotive with the long nose end forward. Mr. Lockwood states on page one that: "This type of operation is contrary to CSXT operating policy and is prohibited by our collective bargaining agreement with the BLE applicable to this line".

On February 1, 2001, the Carrier issued a letter finding Claimant in violation of Train Handling Rule 3.2, Section 3 and assessing a penalty of 20 days actual suspension¹. The Organization appealed the Carrier's decision by letter dated March 1, 2001. On March 7, 2001, the Carrier denied the appeal. Having failed to resolve this issue on the property, it is now properly before this Board for disposition.

POSITIONS OF THE PARTIES: The Carrier argues that it has met its burden of proving Claimant violated Train Handling Rule 3.2, Section 3 by failing to wait ten seconds after placing the locomotives throttle on the idle position prior to applying the dynamic brakes. The event recorder download and Mr. Brierly's testimony demonstrate Claimant's violation of the Rule, the Carrier maintains. The 20-day suspension was fully warranted, since any safety breach in operating a train constitutes a serious violation, the Carrier argues. It urges that the claim be denied.

The Organization argues that the claim must be sustained because there was no violation of Train Handling Rule 3.2, Section 3. First, the organization argues a number of procedural irregularities and due process violations that should invalidate the charge. The original notice was late and otherwise defective, the Organization claims. Essential witnesses were either ignored and not questioned, or were not properly not given notice of the

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On page 3 of its Ex Parte Submission, the Carrier states that: "No discipline was assessed on the charges of disabling the events and speed recorders." The record contains no finding that Claimant was guilty of disabling the recorders.

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hearing, the Organization maintains. Additionally, the claim must be sustained on the merits, the Organization urges. Claimant was directed to operate the train in an unsafe manner, contrary to the Carrier's normal procedures and in violation of the Collective Bargaining Agreement, the Organization argues. Claimant was inexperienced in traveling the Myrtlewood to Selma route; any mishandling of the brakes was a result of operating the train in reverse and the engineer's inexperience with the route, the Organization argues. The claim must be sustained, the Organization urges, and the discipline rescinded, any mention of the discipline must be removed from Claimant's personnel records, and the Carrier must make the Claimant whole for any losses in wages, benefits and seniority, the Organization urges.

DISCUSSION AND ANALYSIS: The Board is persuaded that the Carrier failed to establish that Claimant violated Train Handling Rule 3.2, Section 3. The Carrier relies exclusively on the trailing locomotive's readout, as explained by Mr. Briely's testimony, to establish that Claimant failed to wait for ten seconds after setting the throttle in idle before applying the dynamic brakes. At best, the readout evidence provides a *prima facie* case, it establishes a rebuttable presumption that Claimant violated the Rule. However, there is sufficient credible and competent evidence, both from Claimant as well as the Carrier, to overcome the presumption thereby created.

First, Foreman of Engines J. J. Brierly admitted that the trailing locomotive's event recorder output showed some erratic entries. This casts some doubt concerning the reading indicating a premature application of the dynamic brake. Second, there is no question that the Carrier placed Claimant in a position where he was required to operate the train in an unsafe manner. Operating the train with the locomotives facing in reverse over an extended distance forced Claimant to assume an awkward position, constantly having to turn his head to see the instrument panel and controls behind him. Mr. Brierly admitted that the resulting physical and mental strain on the engineer may have contributed to a mishandling of the dynamic brakes. Third, Claimant was not experienced with the Myrtlewood to Selma route; he had only made that run a few times during daylight hours, and certainly not while running a locomotive in reverse. Once again Mr. Brierly confirmed that a

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lack of familiarity with the route may have contributed to mishandling the dynamic brakes; any sudden curve, any unexpected grade may have led the engineer to apply the dynamic brake prematurely. Claimant's lack of visibility on one side, which forced the Conductor R. H. Hardy to look out and forewarn Claimant of any upcoming signal, gave added weight to this possibility. Finally, Claimant had suffered a neck injury as a result of the position he had to assume to conduct the train in reverse and testified that he did not remember if and how he applied the brake. According to his testimony, Claimant was in excruciating pain at the time the premature application of the dynamic brake allegedly took place. Conductor Hardy confirmed that Claimant was experiencing severe pain at the time; and replacement engineer S. W. Bass testified that he too experienced neck pain as a result of running the locomotive in reverse. It is entirely possible that Claimant's awkward and uncomfortable position impaired his ability to operate the dynamic brakes properly.

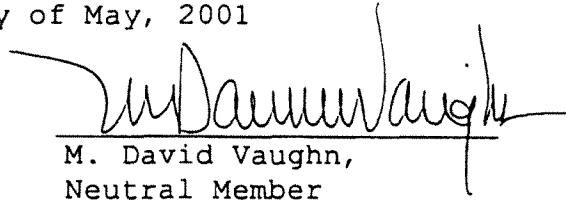
After a review of the evidence presented at the disciplinary hearing, the Board is convinced that if in fact the dynamic brakes were applied prematurely, the Carrier failed to establish that Claimant did so knowingly, intentionally, or even negligently. To the contrary, if there is any culpability to mete out in this case, it should rest fully with the Carrier, whose decision to operate the train with the direction of the locomotive in reverse over an extended distance created a mishap waiting to happen.

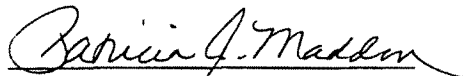
Because of its decision to sustain the instant claim on the merits, the Board will dispense with any discussion concerning the procedural and due process arguments raised by the Organization in its Ex Parte Submission.

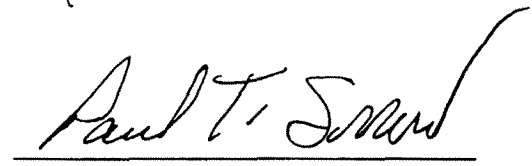
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AWARD: The claim is sustained. The Carrier shall make Claimant whole for wages and benefits lost for the time he was suspended without pay. All disciplinary notices related to this incident shall be expunged Claimant's personnel file. The Carrier shall implement these terms within 30 days from the date of issuance of the Award.

Dated this 22nd day of May, 2001


M. David Vaughn,
Neutral Member


Carrier Member


Organization Member