

SPECIAL BOARD OF ADJUSTMENT NO. 928

AWARD NO. 197  
NMB CASE NO. 197

PARTIES TO THE DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

- and -

NATIONAL RAILROAD PASSENGER CORPORATION

STATEMENT OF CLAIM:

Claim of Amtrak Passenger Engineer W. J. Hartmann for the rescinding of the discipline imposed of "Termination from your position of Assistant Passenger Engineer and all other capacities effective November 22, 1996" as stated in the decision letter from General Manager -- Chicago Terminal & Hub Service Jack Pearson and restoration to service with seniority and vacation entitlement and health and welfare benefits during the period held out of work.

Outline of Alleged Offense

Charge: Your alleged violation of the following Illinois Central Operating Rules:

Rule B, which reads in part, "If there is any doubt or uncertainty. . .the safe course must be taken."

Rule 90, which reads, "Crew members must communicate with each other and have a thorough understanding of at least two miles before reaching a point where their train is restricted."

Rule 101(b), which reads, "When moving over restricted track, a train must not exceed the prescribed speed until the rear of the movement has passed over the restricted track."

Rule 771, which reads in part, "The conductor and the engineer will be equally responsible for the safe and proper handling of the train..."

Rule 806, which reads in part, "...A crew member, certified as an engineer. . .may operate the engine with the permission of and in the presence of the engineer, who will be responsible for the proper operation of the engine and handling of the train..."

Specifications: In that while employed as the assistant engineer of Amtrak Train #303 at MP 19.9, Illinois Central, Joliet District, on November 4, 1996, you failed to comply with Illinois Central Track Permit #9, Item 12, operating your train through a 25 MPH restriction at approximately 77 MPH.

OPINION OF BOARD:

At the time of the incident precipitating this case, Claimant was employed as an Assistant Passenger Engineer, headquartered at Chicago, Illinois. His seniority date was June 26, 1980. On November 4, 1996, Claimant was assigned as assistant engineer on Amtrak Train No. 303. Prior to the commencement of the trip the crew -- the Engineer, Claimant, and the Conductor -- each obtained Track Permit No. 9 from the GB office before leaving Chicago. Item 12 of the Track Permit ("Other specific instructions" stated, "Reduce speed to 25 MPH over a point located at mile 19.9." In the course of the trip, Train 303 operated through MP 19.9 at 77 MPH. Claimant was subsequently removed from service, as were the Conductor and the Passenger Engineer.. By letter of November 6, 1996, Claimant was notified to appear for an investigation concerning his alleged violation of various Carrier operating and safety rules.

A joint investigatory hearing was held for all three charged employees on November 13, 1996. Following the hearing, Claimant was notified of his dismissal from Carrier's service. The Organization appealed Carrier's discipline by letter of November 26, 1996. The matter was discussed by the Parties on December 19, 1996, after which it remained unresolved.

At the outset, the Organization protests that Claimant was not afforded a fair and

impartial hearing. A careful review of the record reveals no support for that allegation. On the contrary, Carrier's Hearing officer offered to postpone the hearing in response to the Organization's protest that Carrier witnesses were not properly identified as such in Carrier's notice of investigation. The Organization declined that offer. (Tp. 19-20)

It is the position of the Carrier that the discipline assessed is commensurate with the infraction. The operating crew had the track permit with the speed restriction at MP 19.9 when they left Chicago. Carrier points out that the speed tapes and the testimony of the Claimant and other crew members confirm that Train 303 entered the restricted area at more than three times the restricted speed of 25 MPH. Further, the Carrier contends that the crew's assertion that they did not believe the speed restriction applied to them is without merit. Finally, the Carrier notes that the Conductor's initial discipline of dismissal was ultimately reduced to a 60 day actual suspension because of his lengthy seniority (44 years) and his clean discipline record.

The Organization maintains that Carrier's assessment of dismissal in this case was excessive and disparate in light of other, similar cases, and in light of the 60-day suspension granted the Conductor. It also cites numerous cases on this and other boards in which crews were returned to work after Carrier's dismissal for similar excessive speed infractions. The Organization points out that the crew conferred regarding the track permit at issue prior to leaving Chicago. It observes that at that briefing none of the three crew members voiced an opinion that the restricted speed notations applied to Train No. 303. With respect to Claimant Hartmann, the Organization contends that Rule 771 (*supra*) applies only to the Conductor and

Engineer, not Assistant Engineers. Accordingly, Claimant cannot have violated Rule 771. In addition, the Organization notes that it is unrefuted that the Conductor Assigned the Assistant Conductor to call the locomotive to alert the crew to any speed restriction. (Tp. 90) Although the Assistant Conductor did not call the engine prior to MP 19.9, Carrier levied no sanctions against him. The Organization also points out that the railroad right of way at MP 19.9 consists of multiple main line tracks with multiple directions of train traffic. Absent specific instructions it was not unreasonable for the crew to assume the restricted speed notation did not apply to their train.

Finally, the Organization draws the Board's attention to the fact that Claimant has seventeen years of satisfactory service as a responsible employee, including over five years as a passenger engineer. Further, no injury or damage resulted from the incident at issue. IN sum, the Organization contends that Claimant was guilty only of failing to seek a clear understanding of the exact location of the temporary slow order. His ability to comply with that order was hampered in large part by the omission of the words "Track No. 1" in Box 12 on Track Permit No. 9. There was never any intent on Claimant's part to violate Carrier's Rules.

Based upon the clear evidence that Train 303 greatly exceeded the speed restriction at MP 19.9, and the potential dangers attendant thereon, there is no basis for eradicating all Claimant's discipline. As an Assistant Engineer fully qualified to operate a locomotive, the Claimant shares responsibility with the Conductor and Engineer for an accurate understanding of any Train Permit. It is unrefuted that he took no steps to resolve the ambiguity contained in

Train Permit No. 9. Carrier's Operating Rule 771, provides that Conductor and Engineer(s) share responsibility for the safe conduct of the train. In view of that clear language of its own rule, barring very disparate personal records the Carrier cannot legitimately discipline the employees in this case as disparately as it has. A review of the transcript of the investigation indicates that, contrary to Carrier's assertion, Claimant made no attempt to excuse his lack of judgment short of criticizing the GB issuance of a sloppy train permit. Based upon the record before the Board, such criticism is well deserved and further extends the potential scope of "blame" to be allocated in this case.

The Board has reviewed carefully the cases cited by the Organization with regard to similar violations on this property (PLB 928, Awards 35, 117, 174, 31, and 105). The Board also reviewed cases cited by the Carrier. In those cases the employee disciplined had either a worse discipline record (PLB 928, Awards 26, 116 & 1199), sole responsibility (PLB 928, Awards 26, 29, 116, and 129), or less seniority (PLB 928, Awards 26 & 29) than Claimant, or there had been in effect a long-standing speed restriction (PLB 928, Awards 119 & 129), or there was a combination of those factors, which distinguish them from the present case.

Claimant had a clear responsibility to clarify the ambiguous Track Permit. Even if it was, arguably, a "shared" responsibility, that does not excuse Claimant's failure to ascertain the exact location and track number of the speed restriction. Carrier reviewed its discipline and the personal record of the Conductor in this case and reduced his discipline to a 60-day actual suspension. Consistency requires that the Board perform the same review for Claimant. Claimant has a single rule violation in his seventeen years of service. Accordingly, the Board

finds that Claimant's discipline should be reduced to 90 days' actual suspension. He shall be returned to work under the usual conditions (medical exam, qualification recertification where applicable) and receive back pay from the date of his withholding from service, less the 90-day actual suspension.

AWARD

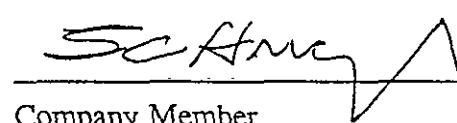
Claim sustained only to the extent set forth in the above Opinion.



Elizabeth C. Wesman, Chairman



Union Member



Company Member

Dated

6-10-98