

SPECIAL BOARD OF ADJUSTMENT NO. 928

AWARD NO. 199
NMB CASE NO. 199

PARTIES TO THE DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

- and -

NATIONAL RAILROAD PASSENGER CORPORATION

STATEMENT OF CLAIM:

Claim of Amtrak Passenger Engineer R. K. Mercer for the rescinding of the discipline imposed of "dismissal from Amtrak in all capacities effective immediately" as stated in the decision letter from General Manager Customer Service and Operations D. J. Beatty and restoration to service with seniority and vacation rights unimpaired, with full compensation for time lost, full credit vacation entitlement and health and welfare benefits during the period held out of work.

Outline of Alleged Offense

CHARGE: Your alleged violation of Rules 6.31, 1.47, 6.23 and 5.16 of the General Code of Operating Rules, Third Edition, Rules 9.16 and 9.1.9 of the BNSF System Special Instructions (No. 1) and Part 1(c) of the BNSF Texas Division, Fort Worth Subdivision Timetable (No.1), . . . [Rules cited in charge letter, not reproduced here]

SPECIFICATIONS: In that, while performing service as an engineer of train #22 on Thursday, August 29, 1996. At approximately 1:30 p.m., CDT, at the west siding switch, Manhattan, TX, MP254 of the BNSF Texas Division, Fort Worth Subdivision, you , as member of the enine crew alleged allowed your train to pass the switch cited above in excess of the 30 mph permitted. In addition, it is also alleged that you failed to take proper and safe measures to communicate signal aspects with your crew and safely brake your train as required by signal aspect information. Further, it is also alleged that you failed to take proper and safe measures to protect your train after emergency braking had been effectuated.

Under the provisions of FRA 49 CFR, Part 240.307 3(c), Revocation of Certification, this investigation will serve as a consolidated hearing to make a determination as provided for in FRA 49 CFR Part 240.307 (b) 4.

OPINION OF BOARD:

The essential facts of this case are not in dispute. Claimant was assigned as a Passenger Engineer headquartered at the San Antonio Crew Base, San Antonio, Texas. On August 29, 1996, Train 22, to which he was assigned, operated through a turn-out switch at Manhattan, Texas, in excess of the 30 mile per hour speed limit, causing an emergency application of the breaking system and injury to two employees (but no passengers) on board the train.

Following an investigation into the incident, a Notice of Formal Investigation, dated September 3, 1996, was sent to Claimant, in which the charges against him were enumerated. Those charges included failure to proceed at or below maximum authorized speed, failure to assure that his subordinates were familiar with their duties, failure to communicate signals to the rest of the crew, failure to flag to protect a and exceeding the speed limits for "approach medium" and "diverging clear signals.". The hearing was held on October 17, 1996, and by letter of October 29, 1996, Claimant was notified of his dismissal from Carrier's service. The Organization progressed an expedited appeal to the Director-Labor Relations. That appeal was denied on January 10, 1997, and on that same date, the Organization requested the cases be placed on this Board.

It is the position of the Carrier that passengers, employees and equipment were placed in undue jeopardy by Claimant's proven violation of the operating rules cited in the Notice of Formal Investigation. The Carrier feels that Claimant exhibited a "cavalier" attitude toward the operation of the train at issue. The Organization maintains that Carrier has not shown that

Claimant has sole or even major responsibility for the incident at issue. Further, the Organization asserts that Carrier's charge that the rear end of the train was fouling the main track once it stopped has not be substantiated on the record. Accordingly, there is no basis to the charge of "failure to flag".

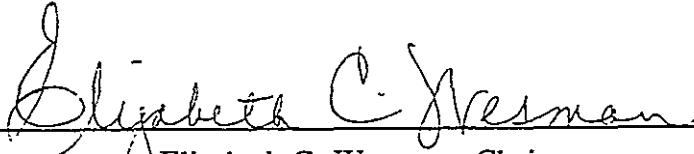
The transcript in this case is extensive (566 pp.). A review of the testimony of Claimant and his crew suggests that, while Claimant shares some responsibility for the incident at issue, he is certainly not primarily responsible. His testimony during the investigation was consistent and forthcoming. Claimant was not at the controls at the time the train entered the restricted speed zone. He had been in the lavatory, and the Assistant Passenger Engineer was at the controls. Upon Claimant's return, and the Assistant Passenger Engineer's vacating of the engineer's seat, Claimant realized that the train was proceeding far too rapidly for track conditions and enacted an emergency stop. Claimant admitted not informing the Assistant Passenger Engineer of the signal aspect, and not informing the remaining crew members of his placing the train's braking system into emergency. With respect to the latter, Claimant stated that he felt there was not sufficient time to warn them. After a review of Claimant's testimony the Board finds that he was, arguably, remiss in informing the remaining crew about the signal aspects. Had the conductor been aware of the speed restrictions, he might have warned the Assistant Passenger Engineer in sufficient time to take action to reduce the train's speed. There is also sufficient evidence on the record to suggest that the train was, indeed, fouling the main track after it came to a stop.

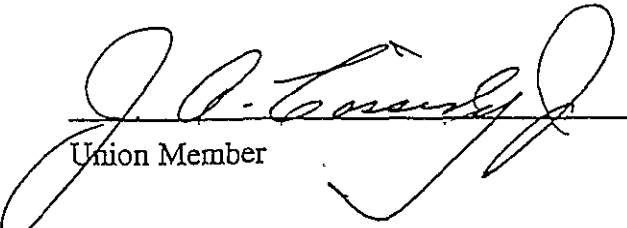
In light of Claimant's forthright testimony, and his long service in the industry (34

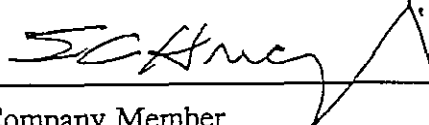
years), the discipline of dismissal is excessive (See, for example Award No. 87, SBA 1063; and Award No. 167 on this Board). Claimant has been out of work for nearly a year. That is certainly sufficient time to have "learned his lesson" concerning the importance of thorough communication with his crew. Accordingly, the Board finds that he shall be put back to work, without back pay, but with all other rights unimpaired, as soon as practicable.

AWARD

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


Elizabeth C. Wesman, Chairman


Union Member


Company Member

Dated

6-10-98