

Special Board of Adjustment No. 928

Case No. 59

Award No. 59

System Docket No. NEC-BLE-SD-217D

Parties to the Dispute:

Brotherhood of Locomotive Engineers, AFL-CIO
and
National Railroad Passenger Corporation (AMTRAK)

Statement of the Claim:

"Claim of Amtrak Passenger Engineer Thomas J. DeAngelis for the removal of the forty-five (45) day suspension imposed including full compensation for all time held out of work."

Opinion of the Board:

Claimant entered engine service on the New York, New Haven and Hartford Railroad as a Fireman on the Shore Line Division on August 26, 1955. He was promoted to Locomotive Engineer in July of 1968. He continued service with the Penn Central Transportation Company; and later with its successor, the Consolidated Rail Corporation, due to mergers. On January 1, 1983, Claimant became an AMTRAK employee.

On May 21, 1988, the Long Island Railroad transferred the location of Signal 6L in the Harold Interlocking (New York City) from a dwarf position (approximately 2' to 3' off the ground) and mounted it above on an overhead signal bridge (approximately 12' high). Signal 6L was placed into service by the Long Island Railroad on June 6, 1988. This change, however, was not reported to AMTRAK.

On Wednesday, September 7, 1988, Claimant was assigned as the Passenger Engineer operating AMTRAK Train No. 174. As a part of that particular assignment, Claimant was required to operate in an eastward direction at the Harold Interlocking. The specific details of Claimant's assignment that day (i. e. - on-duty time; reporting location; identity of the other members of Claimant's crew; and size of passenger complement) have not been included in the hearing record which has been presented. This particular section of track (i. e. - Harold Interlocking) is actually a section of the Long Island Railroad, which is operated over by AMTRAK trains on an irregular basis. As a matter of fact, Claimant had not operated over this particular section of track for approximately four (4) or five (5) years prior to September 7, 1988.

At approximately 2:16 PM on the aforementioned date, while Claimant was operating AMTRAK Train No. 174 in the area of the Harold Interlocking, he approached the switching area, running his Train at a very slow speed (which Claimant maintains was approximately eight (8) miles per hour),¹ while simultaneously searching for Signal 6L, which he understood to be a dwarf signal or pot signal; and which was supposedly located on the ground next to the track on the engineer's side of the engine. The weather was clear and sunny. Meanwhile, Claimant maintains that he was also watching the switches ahead of him to insure that they were aligned properly in order to enable him to properly traverse that particular section of track.

As noted previously, as of September 7, 1988, Carrier had not been notified by the Long Island Railroad of their having moved Signal 6L; and Carrier, in turn, did not issue a change of location bulletin to Carrier's train

¹ The engine's event recorder speed tapes were later checked by Carrier but were found to be unusable because of an apparent malfunction of the recorder apparatus itself.

crews. Consequently, on the day in question, Claimant assumed that Signal 6L was still a dwarf signal, as it had been in the previous years when he operated over that particular area of track. While searching for Signal 6L on September 7, 1988, however, Claimant noticed that the forward switches were not aligned properly in order to grant his Train access to the Main Line; and, as a result, Claimant stopped his Train. Unfortunately, however, at that point, Claimant, by his own admission, had run past the red Signal 6L -- which was now located on the bridge above the track -- by approximately three (3) car lengths. Carrier contends that Claimant's Train ran past Signal 6L by approximately one thousand feet (1000').

As a result of his running through the red stop signal, Claimant was subjected to a drug/alcohol test (which he apparently successfully completed) in accordance with FRA regulations; and on that same day, he was immediately removed from service pending the conducting of a formal investigation in this matter.

On Friday, September 9, 1988, Carrier sent Claimant a certified letter directing him to attend a formal investigation on Tuesday, September 13, 1988, which was to be held in order to investigate the following charges:

- "1. Alleged violation of Rule 27 AMT-1, Amtrak Operating Rules and Instructions which states in part 'The absence of a fixed signal at a place where it is usually shown must be regarded as the most restrictive indication that can be given by that signal,' in that you allegedly operated your train #174, engine 935 past signal #6L displaying Stop, Line #2, Harold Interlocking at approximately 2:16 p.m. September 7, 1988.
2. Alleged violation of Rule 629 AMT-1, Amtrak Operating Rules and Instructions which states in part 'Trains must not pass an interlocking signal indicating Stop, except when authorized by a Clearance Permit Form C, in that you allegedly passed signal #6L, Line #2 Harold Interlocking, displaying Stop without authority, while operating train

#174, engine 935 at approximately 2:16 p.m. September 7, 1988.

3. Alleged violation of Rule 292 AMT-1, Amtrak Operating Rules and Instructions, which states the name and indication displayed (Stop) signal #6L, Line #2 Harold Interlocking which you allegedly passed in Stop position while operating train #174, engine 935 at approximately 2:16 p.m. September 7, 1988.
4. Alleged violation of Rule 290 AMT-1, Amtrak Operating Rules and Instructions, which pictures the cab signal indication of the restricting aspect; by definition stating 'Restricted speed prepared to stop within one half the range of vision, short of train, obstruction or switch improperly lined, looking out for broken rail but not exceeding 20 miles per hour outside interlocking limits, nor 15 miles per hour within interlocking limits. Speed applies to entire movement,' in that you allegedly passed signal #6L, Line #2 Harold Interlocking in stop position while operating train #174, engine 935 at approximately 2:16 p.m. September 7, 1988."

Claimant never received his official written Notice of Investigation. Carrier contends that said Notice was sent to Claimant at his home by U.S. certified mail on Friday, September 9, 1988; and that on that same day, Carrier telephoned Claimant's home and left a message with Claimant's wife concerning the scheduled investigation. Claimant contends that his wife never received such a telephone call; and that the first time that he had any knowledge of such a hearing was when he received a telephone call from his Local Chairman at 8 PM on Monday, September 12, 1988, informing him (Claimant) that an investigation was scheduled for the next morning and that he (Local Chairman) would meet him (Claimant) there.

Said investigative hearing was conducted as scheduled on Tuesday, September 13, 1988, with Claimant in attendance and offering testimony. At the outset of said hearing, Claimant and his Organizational Representative protested that he (Claimant) had not received proper notification of said

hearing; and that he had not had an opportunity to review the charges, prepare a proper defense, or secure any witnesses. The Hearing Officer offered to recess the hearing; and stated, "... and you can take whatever time you'd like to review ... the charges against you ... (and) ... to contact any witness or witnesses that ... (Claimant) ... would desire in his behalf ..." (Tr. pp. 5-7), but Claimant and his Organizational Representative declined the offer, and agreed to proceed with the hearing.

Pursuant to the conducting of said investigative hearing, in a certified letter dated September 19, 1988, Claimant was notified by Carrier that he had been adjudged as guilty in Charges #1, #2 and #3 of the original charges; that Charge #4 "... was not substantiated by the evidence presented"; and that, as a result, he was to be assessed a "... (F)orty-five (45) days suspension, time held out of service to apply; Requalify Physical characteristics New York Division, Shell to A."

Organization/Claimant filed a written claim in protest of Carrier's assessment of a forty-five (45) days suspension against Claimant in this matter. Said claim, for reasons which will be discussed more fully hereinafter, was denied by Carrier; and the matter was appealed unsuccessfully by Organization throughout all of the steps of the parties' negotiated grievance procedure. Thereafter, the matter was appealed by Organization to arbitration; the undersigned Board was properly constituted and authorized to hear and decide this matter; and pursuant to hearing, the matter is now properly before this Board for resolution.

Organization initially argues that Claimant's suspension should be overturned by virtue of the fact that Claimant's investigative hearing was not conducted in a fair and impartial manner as is required by Rule 21(a) of the parties' controlling agreement. Accordingly, Organization maintains that the

Hearing Officer failed to provide a fair and impartial forum to determine all of the facts involved in the subject incident; and also that Claimant did not receive proper/timely notice of his investigative hearing as is required by Rule 21(m). As a result of said procedural failure(s), Organization maintains that Claimant was unable to properly prepare his defense in this matter, nor was he able to contact all appropriate witnesses who could have been utilized in his defense.

Regarding the merits portion of its case, Organization also argues that it is manifestly unfair to hold Claimant responsible in this matter when Carrier was equally negligent herein by failing to inform Claimant, or any of the AMTRAK operating crews for that matter, about the location change of Signal 6L. In this regard, Organization contends that Carrier failed to properly bulletin the change of Signal 6L's location prior to September 7, 1988; and that Carrier only did so on September 8, 1988, as a direct result of Claimant's incident on the preceding day.

Lastly, Organization argues that Claimant's forty-five (45) days suspension was "unreasonable and excessive"; and that, as such "...it is within the power of the Board to tailor the remedy to 'fit the crime'."

Carrier counters Organization's procedural objections by arguing that the Notice of Investigation was sent to Claimant at his residence by Carrier by U.S. Postal Service certified mail; and that Carrier cannot be held responsible for the excessive amount of time it took the Postal Service to deliver said Notice. Furthermore, Carrier also contends that at said hearing, both Claimant and his Organizational Representative were offered the opportunity to have the hearing recessed, but they agreed to proceed. Accordingly, therefore, Carrier maintains that Claimant/Organization cannot

now use this procedural objection to overturn the discipline which has been assessed by Carrier in this case.

As for the merits portion of this case, Carrier counters Organization's objections herein by arguing that even though Carrier did not previously issue a bulletin indicating the change of location of Signal 6L, Rule 27 of the NORAC Operating Rules, nonetheless, requires that any engineer who approaches a missing or unlit signal is supposed to consider that the most restrictive indication is displayed until further confirmation/approval is given. Since Signal 6L is an interlocking signal at the Harold Interlocking, then, according to Carrier, the most restrictive indication for that signal would have been a positive stop -- and Claimant should have stopped his Train before he went through the point where he thought dwarf Signal 6L was supposed to be. This is even more significant, Carrier asserts, because the previous signal which Claimant's Train was proceeding under was a "slow approach" which means " ... proceed, prepare to stop at next signal, slow speed within interlocking limits ... " (Tr. p. 36).

Still yet further related to this same point, Carrier also argues that despite the Long Island Railroad's failure to notify AMTRAK of the change of location for dwarf Signal 6L, two (2) other AMTRAK trains had traveled over that particular trackage without incident since the new signal was placed into service by the Long Island Railroad on June 6, 1988. This fact, Carrier contends, indicates that the absence of the old signal and the repositioning of the new signal obviously did not confuse those other crews; they handled the situation properly -- and Claimant should have done likewise, but he did not.

Given the above reasons, Carrier urges that the Board should uphold the assessment of Claimant's forty-five (45) days suspension since Claimant admitted running through the red signal; and that such a suspension is

neither arbitrary nor capricious given the seriousness of the violation, the dire consequences which could have occurred, and Claimant's past disciplinary record which included operating rules violations.

We have carefully reviewed the complete record which has been presented in this case, and we find that Claimant, through his Organizational Representative, raised timely objections at the investigative hearing alleging that Carrier failed to properly notify Claimant in a timely manner of the scheduling of said hearing so as to enable Claimant to prepare a proper defense.

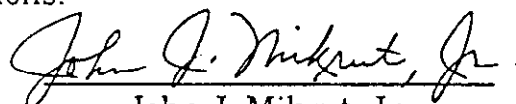
Such a failure on Carrier's part is a particularly serious procedural dereliction which, under normal circumstances, could serve as a fatal flaw in Carrier's handling of this matter, thus warranting a complete vindication of Claimant and a rescission of his forty-five (45) days suspension. Though this be true, however, the record in the instant case further shows that the Hearing Officer offered to recess the investigative hearing in order to permit Claimant/Organization sufficient time to study the charges, prepare a proper defense, and call appropriate witnesses. Despite this offer, the record further shows that Claimant and his Organizational Representative, nonetheless, agreed to proceed with the hearing as set. Said agreement, it is concluded, thereby served as a waiver to any and all objections which Claimant/Organization may have later raised regarding any procedural irregularities attendant to the propriety of Claimant's September 9, 1988 Notice of Hearing.

Turning next to the merits portion of this case, the Board is in basic agreement with Carrier's contention that under the provisions of Rule 27 AMT-1 AMTRAK Operating Rules and Instructions, when confronted with the absence of a signal where Signal 6L was supposed to have been located at

the Harold Interlocking on the day in question, Claimant should have been prepared to stop his Train before passing through that particular segment of track. The preceding signal should have been sufficient to apprise Claimant of that possible operational contingency. Therefore, Claimant's guilt in this matter is clear; and cannot be overlooked or minimized. By the same token, however, Carrier's absolute denial of any responsibility whatsoever for the occurrence of the September 7, 1988 triggering incident also cannot be accepted. Accordingly, Carrier, as the defender of the Long Island Railroad's unacceptable trackage maintenance error, would have this Board believe that Claimant should accept sole and total responsibility for the subject incident. The Board cannot accept this premise; the record herein, without question, establishes that Carrier/Long Island Railroad is/are also culpable in this matter; and, consequently, the Board is compelled to conclude that Carrier's assessment of a forty-five (45) days suspension against Claimant was excessive, and therefore should be reduced instead to a more appropriate disciplinary assessment recognizing the parties' shared culpability in this matter. In accordance with the aforestated rationale, therefore, the Board will direct that Claimant's forty-five (45) days suspension be reduced instead to a twenty (20) days suspension without pay; and that Claimant shall be made whole for the additional loss of pay, and his record shall be amended accordingly.


Award:

Claim sustained; and remedy directed in accordance with the above findings and conclusions.




John J. Mikrut, Jr.
Chairman and Neutral Member

SBANO. 928
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L. C. Hriczak
Carrier Member



J. A. Cassidy, Jr.
Organization Member

Issued in Columbia, Missouri on October 15, 1994.