

NATIONAL MEDIATION BOARD  
SPECIAL BOARD OF ADJUSTMENT NO. 990

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THE LONG ISLAND RAILROAD COMPANY	:	Award No. 32
"Carrier"	:	Re: C.W. Kavanaugh
- and -	:	
BROTHERHOOD OF LOCOMOTIVE ENGINEERS	:	
"Organization"	:	
	:	

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APPEARANCES

For the Carrier

S.M. Drayzen, Director of Labor Relations,  
Administration  
J. J. Tinchino, Labor Relations Representative  
M. Neresian, Labor Relations Representative

For the Organization

R. M. Evers, BLE General Chairman  
R. L. Willis, BLE Committeeman  
G. H. Resch, BLE Secretary-Treasurer

BEFORE:   HOWARD C. EDELMAN, NEUTRAL MEMBER  
          S.M. DRAYZEN, CARRIER MEMBER  
          R.M. EVERS, ORGANIZATION MEMBER

### BACKGROUND

This claim protests Carrier's decision to suspend Claimant C.W. Kavanaugh for thirty days. The Organization's claim states as follows:

#### STATEMENT OF CLAIM

Engineer Charles W. Kavanaugh claiming thirty (30) days pay for all time lost while being held out of service, in addition to being made whole for any and all benefits lost as well as expungement of my record as a result of the discipline assessed in violation of Article 29 of the current BLE Agreement in connection with the following charge:

*Your responsibility, if any for violation of Rule 292 (Fig. C) of the current rules of the Operating Department, in that you passed 40 Signal in West Side Yard in stop position at approximately 11:10 a.m. on January 1, 1998, while working as Engineer of Train 8017.*

Carrier rejected the Organization's claim. Upon the parties' failure to resolve the dispute on the property, the matter was appealed to this Board for adjudication. A hearing was held before us on July 14, 2000. At its conclusion, the record was closed. This Opinion and Award follows.

#### POSITIONS OF THE PARTIES

Carrier asserts that Claimant was properly held out of service for thirty days. It insists that train 8015<sup>1</sup>

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<sup>1</sup>Carrier concedes a typographical error in that its charge refers to Train No. 8017, not 8015.

had the order to proceed up to 40 Signal at West Side Yard at approximately 11:10 a.m. on January 1, 1998. Yet, it notes, as several witnesses testified at the trial, 8015 Westbound passed the 40 Signal in the stop position by approximately one and one-half car lengths. There is no doubt that the eastbound train had the superior route, Carrier submits. Hence, it alleges, Claimant's action could have resulted in disastrous consequences had the eastbound train moved when claimant passed the 40 signal.

Furthermore, Carrier argues that a 24 hour watch was conducted and it showed that the 40 Signal was working properly. Hence, it insists, the Organization's contention that the signal may have malfunctioned is without merit.

As to procedural issues, Carrier submits that to the extent any exist, they are minor in nature and do not warrant upholding the Organization's claim. For example, it notes that all involved, including Claimant, knew he was operating Train 8015, not Train 8017, as alleged in the charges. Thus, Carrier contends, these and any other procedural infirmities are minor in nature and do not justify sustaining the claim. In sum, Carrier maintains that it has conclusively proven the allegations raised against Claimant. Consequently, it asks that the Organization's claim be denied.

The Organization maintains that its claim should be sustained for both procedural and substantive reasons. As to procedure, the Organization contends that the Hearing Officer made numerous errors in the trial held on the property. Among these, the Organization submits, was his failure to summon the Conductor to appear at the hearing though he has as much responsibility for running the train as the Engineer. Also, the Organization asserts, the Hearing Officer prevented numerous questions from being answered at the hearing. Therefore, it urges, its claim should be sustained on procedural grounds alone.

As to the merits, the Organization maintains that Carrier has failed to sustain its burden of proof that Engineer C.W. Kavanaugh passed 40 Signal in West Side Yard on the date and time in question. It alleges that often signals malfunction and that Carrier has not demonstrated that 40 Signal at the West Side Yard was operating properly at the time of the incident in dispute. In fact, it suggests, a 24 hour watch on 40 Signal was not begun until more than four hours after Claimant allegedly passed it in the stop position. Accordingly, and for these reasons, the Organization asks that its claim be sustained as presented.

### DISCUSSION AND FINDINGS

After carefully reviewing the record, this Board finds that the claim must be sustained on procedural grounds alone. Central to our determination is the Hearing Officer's failure to call Conductor Guarino to testify at the trial board. Though Claimant was certainly responsible for the operation of the train, Conductor Guarino also bore substantial responsibility as well, even if to a lesser extent than was Claimant. As noted in Chicago and Northwestern Transportation Company and Brotherhood of Locomotive Engineers, Award No. 24296, NRB, First Division, April 15, 1994, "The notion of a fair hearing requires that the Carrier summon to the hearing all witnesses which reason and logic dictate may have some relevant and material testimony or evidence to present." Clearly, a co-crew member, such as a Conductor, may have relevant testimony concerning an alleged failure of the train to stop at a signal, as ordered. As such, this procedural error is not a minor one which is later cured. Instead, it renders the trial fatally defective, we conclude, for it precludes a full and fair airing of all relevant facts at the trial board.

This ruling is limited to the facts of this case. Also, we note that Claimant has appealed his loss of certification to the Locomotive Engineers Review Board and our determination is not intended to have any

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bearing, direct or indirect, on that proceeding.  
Nonetheless, and for the reasons set forth above, the  
claim must be sustained. It is so ordered.

FINDINGS

The Special Board of Adjustment No. 990, upon the whole record and all of the evidence, finds and holds: That the Carrier and Employee Organization involved in this dispute are respectively Carrier and Employee Organization within the meaning of the Railway Labor Act, as approved June 21, 1934; that the Special Board of Adjustment No. 990 has jurisdiction of the dispute involved herein; and, that the claim in Award No. 32 will be sustained.

Howard C. Edelman  
Howard C. Edelman,  
Neutral Member

October 15 2000  
Date

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Concur ✓

Dissent

10-16-2000  
Date

Robert M. Evers  
R.M. Evers,  
Organization Member



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Concur \_\_\_\_\_

Dissent ☒ \_\_\_\_\_

10/16/00  
Date

S.M. Drayzen  
S.M. Drayzen,  
Carrier Member