

SPECIAL BOARD OF ADJUSTMENT 928

AWARD NO. 206
NMB CASE NO. 206

PARTIES TO THE DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

- and -

NATIONAL RAILROAD PASSENGER CORPORATION

STATEMENT OF CLAIM:

Claim of Amtrak Passenger Engineer T. L. Headley for the rescinding of the discipline imposed of "effectively immediately, you are dismissed in the capacity of Locomotive Engineer" as stated in the decision letter of November 14, 1996 under the signature of General Manager Customer Services, E. V. Walker and restoration to service with seniority and vacation rights unimpaired, with full compensation for time lost, full credit toward vacation entitlement and health and welfare benefits during the period held out of work.

OPINION OF BOARD:

On the date of the incident at issue, Claimant was assigned as the Engineer of record on engine No. 738, Washington Terminal yard assignment WS-20B. In addition to the Claimant, the train was staffed by two crew members: a Conductor and an Assistant Conductor. Claimant and his crew were negotiating a Wye intersection to pick up mail handling car (MHC) 1436. The mail handling car was on the "Short Leg" of the Wye, south of Spring Switch 812. After coupling they were instructed to return over the East Leg of the Wye to reposition MHC 1436 on another yard track. After completing the coupling and receiving the "proceed" signal

from his conductor, Claimant's engine proceeded north toward the East Leg. After traveling approximately 32 feet towards the East Leg of the Wye, Claimant stopped the train movement because the rear truck of locomotive 738 had derailed.

Following an investigation of the site, the investigating committee concluded that the cause of the derailment was "failure to clear the 812 Spring Switch." Claimant received the following notice, dated September 20, 1996; which read in pertinent part:

You are hereby directed to appear for a formal investigation as indicated below:

DATE: September 24, 1996
TIME: 9:00 a.m.
PLACE: Hearing Room, REA Building
900 Second Street, N.E., Lower Level
Washington, D.C. 20002

Be advised that this will be a joint investigation to be held in conjunction with File 96-256 addressed to Ms. F. A. Goldson.

The purpose of this investigation is to develop the facts and determine your responsibility, if any, in connection with:

CHARGE: Your responsibility, if any, while assigned as Engineer on crew WS-20B on Wednesday, September 18, 1996, at approximately 5:40 p.m., in that you failed to clear the 812 spring switch, derailing the south or "R" truck of locomotive 738, coming to a stop 32 feet north of the switch point of the 812 spring switch.

A hearing was held on November 6, 1996. Claimant was subsequently notified by a letter dated November 13, 1996, of his dismissal from Carrier's service. The Organization appealed the Carrier's decision by letter of December 3, 1996. That appeal was denied and the claim was progressed in the usual manner, after which it remains unresolved.

At the outset, the Organization protests that the investigatory hearing was unfair, that the hearing officer prejudged the Claimant. A careful review of the record before us convinces the Board that there is no basis for that protestation.

It is the position of the Carrier that Claimant was guilty of negligent behavior when he

failed to ascertain that the 812 spring switch was not in the proper position. The Carrier maintains that it is the sole responsibility of the engineer to make sure the switch is properly aligned. It further notes that Claimant admitted failing to watch the conductor when she dismounted the engine during its maneuver through the Wye. Finally the Carrier asserts that in light of Claimant's prior record, the discipline assessed was not excessive.

The Organization acknowledges that Claimant shares some responsibility for the derailment, but contends that the discipline assessed in the case is disproportionate. It notes that it is normal procedure for the conductor to operate any switches in the yard during maneuvers such as the one at issue. The Organization further points out that Claimant's service record had measurably improved over the three years prior to this incident. Moreover, the Organization notes that, although there was supposed to be a three-person crew on duty, Carrier seems utterly unconcerned about the whereabouts of the assigned Assistant Conductor during the retrieval of MHC 1436. Finally, the Organization points out that, although Claimant could see the flag designating presence of the switch, the Conductor on the ground was solely able to determine the position of the switch.

The Board shares the Carrier's concern for safety in all its operations, particularly those involving engine movement. In the present case, however, the undisputed facts of the case inveigh against assessing Claimant with the ultimate penalty of dismissal. Carrier's own witness confirmed that "if there's a conductor or trainman on [a] move,...the trainman will normally throw the switch (Tp.21)." That statement is buttressed by this Board's finding in Award No. 87, in which it upheld a claim protesting assignment of an Engineer to manipulate switches when there were trainmen assigned to the crew.

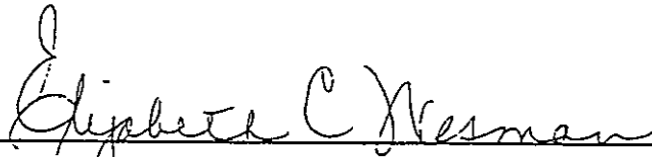
In addition, it is apparent from the record that the only person able to ascertain the alignment of the switch, rather than simply its location, was the conductor on the ground at the

time. (See Award No. 9 of PLB 3218) The Board shares the Organization's puzzlement at Carrier's apparent lack of concern regarding the absence of a crew member who, had he been attending to duty, hypothetically might have prevented the derailment. (Carrier's discipline letter of November 13, 1996.)

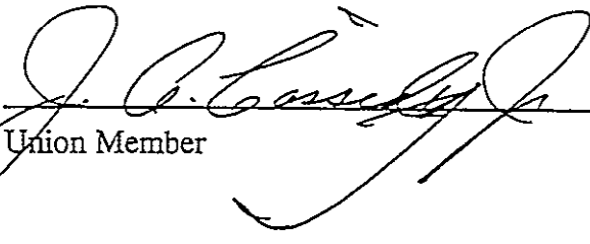
The Board agrees that some discipline of Claimant is appropriate in this case. It can reasonably be argued that as engineer, Claimant should have confirmed with the conductor that the switch was in proper alignment before passing the "proceed signal." In light of Claimant's less than stellar record, the Board feels that a harsh penalty short of dismissal is warranted, to impress Claimant with the extraordinary responsibility incumbent upon a locomotive engineer. Accordingly, the Board finds that the discipline should be reduced to a one-year's suspension without pay. Claimant shall be reinstated under the usual provisions (medical exam, etc.) as soon as possible and received back pay from September 18, 1997.

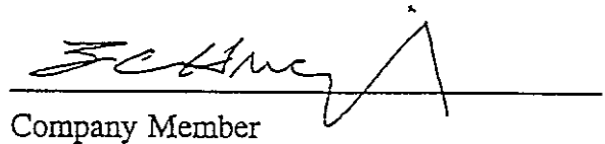
AWARD

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



Elizabeth C. Wesman, Chairman


Union Member


Company Member

I DISSENT,

Date: 6-10-98