

SPECIAL BOARD OF ADJUSTMENT NO. 928

**AWARD NO. 337
SBA CASE NO. 337**

PARTIES TO THE DISPUTE:

National Railroad Passenger Corporation (Amtrak)

- and -

Brotherhood of Locomotive Engineers

STATEMENT OF CLAIM:

Claim of Passenger Engineer G. Pitman for the rescinding of the discipline imposed of "termination in all capacities effective immediately" as stated in the decision letter of March 26, 1999 under the signature of Interim General Manager-----Western Business Group, Joy Smith, and restoration to service with full 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 and clear Claimant's personal record of any reference to alleged violation.

OPINION OF BOARD:

On February 26, 1999, Passenger Engineer Claimant G. Pitman was operating Amtrak's Train No. 4 from LaJunta, New Mexico to Dodge City, Kansas. That night, at approximately 11:02 p.m., the Burlington Northern Sante Fe (BNSF) train dispatcher requested Claimant's location whereupon Claimant reported his location to be Milepost 456. The Claimant responded in the affirmative when the train dispatcher repeated the milepost location back to Claimant.

The Conductor on Train No. 4 hailed the Claimant on the radio to inform him the train was actually at Milepost 486. Claimant was advised by the BNSF Dispatcher, whom he called immediately upon being informed by the Conductor to correct the location, that he was operating on the BNSF main track without authority.

When the crew arrived the train's Dodge City, Kansas, destination the crew was removed from service. An investigation held on March 17, 1999, Claimant was terminated from Amtrak's employ on March 26, 1999, for violating the General Code of Operating Rules 6.3 and 14.3.

It is the Carrier's position that Claimant was at the throttle of Train #4 and therefore responsible for operating the train at all times. The Carrier asserts that the Claimant placed his train in peril and that it was only by luck that the BNSF Dispatcher had not released an oncoming train that was waiting to operate over the same track. Further, the Carrier asserts that Claimant violated the rules cited in the charge, that he placed the train and its passengers in harms way, and that this is the second time within a year that an incident of this nature occurred.

Key to the Carrier's position is that the Engineer is responsible for informing the dispatcher he is clear of the milepost stated in the dispatch. GCOR 14.3 Operating with Track Warrants (item 1 amended) reads in pertinent part:

"Number 1 - Proceed from one point to another in the direction the track warrant specifies. When a crew member informs the train dispatcher that the entire train has passed a specific point, track authority is considered void up to that point. When the train dispatcher instructs a train crew to report passing a designated station or milepost, if the station has a siding to report, the report must be made after the rear car of the train passes over the last siding switch or rear car or train passes the milepost. If the designated station does not have a siding, the report must be made when the rear car of the train passes the station sign."

It is the Organization's position that the Claimant has been wrongfully terminated by the Carrier for an alleged rule violation that was initiated and compounded by the host

railroad BNSF. It alleges the BNSF practices are inconsistent, deficient, and ambiguous. The record contains testimony that corroborates the inconsistencies of the BNSF practices, but hearing testimony makes clear the general expectation that the track is rolled up behind stated mileposts.

The Organization also states that GCOR Rule 1.47 makes clear that the responsibility for the safety and protection of the train is shared by the conductor and the engineer, yet the Claimant was assessed the full weight of the discipline for the incident at hand. The Organization further asserts the Claimant is the victim of arbitrary and disparate treatment as he was the only operating crew member disciplined for the alleged infraction.

GCOR 1.47: Responsibility of Trainmen and Enginemen

“The conductor and the engineer are responsible for the safety and protection of their train and the observance of the rules, and under conditions not provided for by the rules must take every precaution for protection.

(1) The general direction and government of a train is vested in the conductor...and all persons employed on the train must obey his instructions, except that they will not comply with any instructions which imperil the safety of the train or involve a violation of the rules. Should there be any doubt as to the authority for proceeding, or safety, the conductor must consult the engineer who will be equally responsible for the safety and proper handling of the train...”

Also noted in the Organization’s position is that the Claimant has a 31-year good record and that the Carrier is in violation of Rule 21.b.1 for holding the Claimant out of service.

Rule 21.b.1 reads in pertinent part:

RULE 21 - Discipline and Investigation

- b.1. "Except when a serious act or occurrence is involved, a Passenger Engineer will not be held out of service in disciplinary matters before a formal investigation is conducted. A serious act or occurrence is defined as: Rule "G", Insubordination, Extreme Negligence, Stealing."

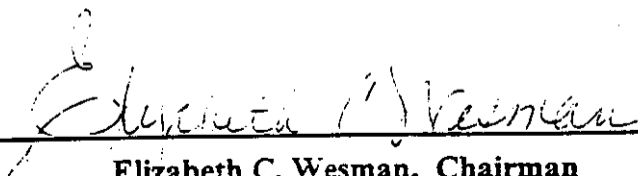
The record does provide sufficient evidence that Train No. 4 was in harm's way and/or jeopardizing the safety of other trains, their crews, or passengers. No train could go onto the track until Train No. 4 had passed and it was not physically possible for Train No. 4 to have traveled 46 miles in time to place the train in the path of another train. It is the position of the Board that while it is the Claimant's responsibility to report the correct Milepost, correcting a milepost approximately 30 seconds after calling it in the case at hand does not meet the "extreme negligence" required for holding a Passenger Engineer out of service.

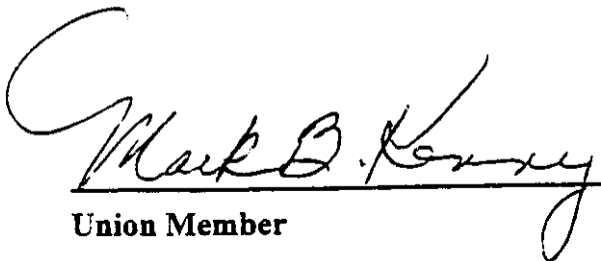
It is the Claimant's responsibility as a Passenger Engineer to state the correct milepost number when reporting to a dispatcher, but in the incident in question, no problems occurred because of the Claimant's mistake. However, because of the possibility of a serious incident looming in an incident of this nature, where trains are in motion and the proximity is near enough to pose serious threats to the safety of the trains, their crews, and their passengers, the Board will not exonerate the Claimant of all culpability.

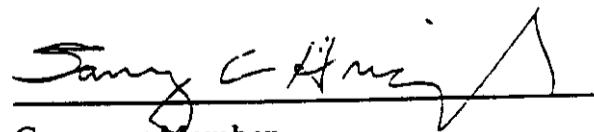
The Board finds that the discipline of termination in this case is excessive. Further, it is particularly excessive considering the Claimant's many years of Carrier service with a good record. Therefore, the discipline is reduced to a 60-day suspension.

AWARD

Claim sustained in accordance with the findings.


Elizabeth C. Wesman, Chairman


Union Member


Company Member

Dated at 2-17-2000