

PUBLIC LAW BOARD NO. 5395

Case No. 48

Award No. 48

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Norfolk Southern Railway Company

STATEMENT OF CLAIM:

Claim of Pocahontas Division, Kenova District Engineer J. H. Gholson for reinstatement with all benefits restored and pay for all time lost due to an investigation held on March 31, 2006, at Portsmouth, Ohio, to determine Claimant's responsibility, if any, in connection with "...(1) failure to properly perform his duties when he coupled to the wrong track and departed the terminal, (2) failure to properly perform the required brake test at Williamson, West Virginia Milepost 469.53, (3) operating train without a two-way end of train device or a rear end marker, (4) excessive speeding between Milepost 472.8 and Milepost 475.6 between 12:20 p.m., and 1:40 p.m., on March 8, 2006 while serving as crew members on Train 147U207."

OPINION OF BOARD:

If this matter were not of such a serious nature, this case might be considered humorous. The Claimant Engineer and his crew left their terminal, Williamson, West Virginia, with the wrong train on March 8, 2006. On that date, the inbound crew of Train 147, yarded their train of 72 cars on Track #4, cutting off 22 Williamson cars and placing them on Track #8, North Yard. After making the transfer, the inbound crew returned to Track #4 with their engine consist, where they were relieved by Claimant's crew. At this point, because of several miscommunications, the outbound crew proceeded to Track #8, North Yard, with the railroad already lined by the inbound crew, where they proceeded to couple up to the train of Williamson cars left by the inbound crew. The Claimant was then advised by his Conductor that the Yardmaster said all that was necessary was "flow and go." With the signal in their favor, the Claimant's crew exited Williamson Yard, ignoring for the moment, that part of the "flow and go" which required a brake test. It appears that when things are meant to go wrong, they will, in spite of good intentions. Had Claimant made the required brake test, he would have noticed the train on Track #8, did not have an "EOTD" (end of train device), which would have alerted him to the fact he was coupled to the wrong train.

Meanwhile, the Yardmaster on duty was made aware of the situation, by a ground airman working in the area, who saw Track #8 was vacated, while the time freight remained on Track #4. Upon investigation, it was confirmed that Claimant's crew left with the wrong train. The Train Dispatcher was duly notified and he stopped Claimant's train about eight miles west of Williamson. The crew was removed from the train, after they operated their units back to Williamson, and gave their statements. As part of the normal investigation in such matters, the event recorder tapes were taken from Claimant's locomotive units and downloaded. Upon examination, they revealed Claimant had exceeded the speed limits allowed for a train operating without an end of train device.

With the facts assembled dealing with this convoluted affair, Carrier charged Claimant with failure to properly perform his duties, when he coupled to the wrong train and departed the terminal; with failure to make a brake test at Williamson; with operating a train without a two way end of train device; and with excessive speeding. The trial, as might be expected, consisted of a lot of finger pointing as to the primary party responsible for this fiasco. The initial problem was the wheel report did not have a track designation, because when it was printed, Train 147, was still en route and the track where it was to be yarded had not been determined. Nonetheless, it was developed that the inbound Conductor had advised the Claimant's Conductor, their train was on Track #4, with two hand brakes applied. The Yardmaster testified he told Claimant's Conductor, by phone, that outbound crew 147 was going to swap out with the incoming crew on Track #4, so they could do their brake test and go. The Yardmaster stated he previously told the incoming crew to leave their train on Track #4, leaving 50 cars of the time freight destined for Portsmouth, Ohio. They were to take 22 cars for Williamson to Track #8 North, cut off and return to Track #4, where they were to be relieved by Claimant's crew. It all looked clean and neat, if only there were not so many players.

The Carrier introduced evidence showing that not only did Claimant fail to make a brake test before leaving, but he neglected to ascertain whether he had the proper equipment (EOTD) as part of his train. The event recorder tapes from Claimant's engine also revealed Claimant exceeded the 30 mph limit, while operating without EOTD. Acting upon the substantial evidence garnered from the trial record, the Carrier discharged Claimant from the service. After an unsuccessful appeal, the dispute was presented to this Board, while Claimant was notified of our Hearing date so he could make arrangements to attend if he so desired.

It is abundantly clear, there should have been better documentation of this arrangement which involved orders to both incoming and outgoing crews. That, of course, is the primary purpose of a "job briefing." If there was one in this case, everyone kept it

a secret. The Yardmaster insisted he gave the crew a full outbound wheel report, which should have made the Claimant's crew aware the cars on Track #8 were not on that wheel report. As a result of this particular misadventure, the Carrier changed its policy and now requires "face to face" job briefings between the crews and the Yardmasters.

The Board is satisfied the Claimant played a significant role in this bizarre affair. Coupling to the wrong train on the wrong track, was the Crew's first mistake. That mistake was mutually shared. The Claimant's failure to make the required brake test was the second major mistake. This failure directly led to the excessive speed and EOTD violations. The Claimant was dominant party in these proven violations.

We have reviewed Claimant's prior record and observed he had been previously dismissed and then reinstated on a leniency basis by Carrier after being out of service for approximately two months. He has been out of service since this incident occurred on March 8, 2006, close to one year. We believe the Claimant should be returned to service, without compensation, with a renewed intention not to act in haste but in compliance with the rules.

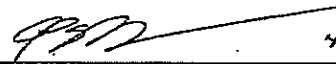
FINDINGS: The claim has been partially sustained.

AWARD: The Claimant is reinstated to service as stated in the Opinion.

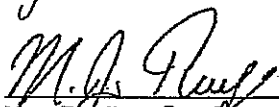
Dated in Norfolk, Virginia, this 14th day of March, 2007.



W. F. Euker, Neutral Member

 4-10-07

C. S. Decker, Carrier Member



M. J. Ruef, Organization Member

