

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6983

**PARTIES** BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

**TO** V.

**DISPUTE** THE BURLINGTON NORTHERN and SANTA FE RAILWAY CO.

COAST LINES DIVISION

AWARD NO. 20

CASE NO. 20

Organization File No. PR-E.V. POLLARD

Carrier File No. 76-06-0029D

**STATEMENT OF CLAIM:**

Claim for Coastlines Engineer E.V. Pollard for reinstatement to service with all rights, seniority and benefits intact, with compensation for all time lost including time lost attending formal investigation, denying the Carrier any rights to offset any outside earnings including time lost attending the formal investigation, denying the Carrier any right to offset any outside earnings, including expunging Claimant's personal record from any further mention of the incident.

**STATEMENT OF FACTS:**

E.V. Pollard ("Claimant"), an employee with a seniority date of April, 1976, when

she was hired on as a switchman/brakeman by the Atchison, Topeka & Santa Fe Railway Company. Claimant was promoted to conductor in July, 1994 and again in March, 1998 to engineer. On January 25, 2006, Claimant was assigned as a locomotive engineer on westbound train 2-WSPPHX9-23. Claimant was instructed to clear her train at the main line at the Castle Hot Spring Station. In advance of the east setting switch at Castle Hot Springs at approximately 1,584 feet from the switch, there is a highway crossing at grade HGX, the same distance at which a Maintenance of Way ("MOW") crew was working. Claimant properly sounded the warning whistle for the HGX and proceeded up to the switch and entered the siding but failed to provide the rule-required warning to the track workers. A Carrier Officer was performing an efficiency test on this train, noted the failure to sound the whistle and discussed it with Claimant. Claimant admitted her failure to comply with the Rule that obligated her to operate the locomotive whistle in the manner prescribed in order to warn crews working on or near the tracks. Claimant admitted that she failed to sound the whistle and there is no discrepancy over this fact.

By letter dated January 27, 2006, Claimant was instructed to attend a formal investigation scheduled for February 22, 2006, to determine her responsibility, if any, in connection with the incident. At the request of the Organization, the investigation was postponed twice and rescheduled to April 12, 2006. Based on the

evidence produced at the investigation, Claimant was dismissed from service by letter dated May 9, 2006 for being in violation of GCOR Rules as follows:

1.1 Safety

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.

1.1.1 Maintaining a Safe Course

In case of doubt or uncertainty, take the safe course.

1.1.2 Alert and Attentive

Employee must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury.

1.47 Duties of Crew Members

B. Engineer Responsibilities

1. The engineer is responsible for safely and efficiently operating the engine. Crew members must obey the engineer's instructions that concern operating the engine. A student engineer or other qualified employee may operate the engine under close supervision of the engineer. Any employee that operates an engine must have a current certificate in their possession.

2. The engineer must check with the conductor to determine if any cars or units in the train require special handling.

#### 5.8.1 Ringing Engine Bell

Ring the engine bell under any of the following conditions:

- Before moving, except when making momentary stop and start switching movements.
- As a warning signal anytime it is necessary.
- When approaching men or equipment on or near the track.
- When whistle signal (7) is required.
- Approaching public crossings at grade with the engine in front and sounding of the whistle is prohibited, start signal at the crossing sign. If no sign, or if movement begins between sign and crossing, start signal soon enough before crossing to provide warning. Continue ringing bell until the crossing is occupied.

#### 5.8.2 Sounding Whistle

The whistle may be used at any time as a warning regardless of any whistle prohibitions. When other employees are working in the immediate area, sound the required whistle signal before moving. Other forms of communications may be used in place of whistle signals, except signals (1), (7) and (8). See following chart:

The required whistle signals are illustrated by “o” for short sounds and “-” for longer sounds:

#### Sound indication

- (1) Succession Use when persons or livestock are on the track at other than road crossings at grade of short sounds. In addition, use to warn railroad employee when an emergency exists, such as a derailment. When crews on other trains hear this signal, they must stop until it is safe to proceed.
  
- (7) -- o - Approaching public crossings at grade with the engine in front, start signal at least 15 seconds but not more than 20 seconds before the crossing. If movement exceeds 69 MPH, start signal at the crossing sign or not more than 1/4 mile before the crossing. Signal 7 changed to read. Approaching public crossings at grade with the engine in front, start signal at least 15 seconds but not more than 20 seconds before the crossing. If movement exceeds 45 MPH start signal at or about the crossing sign, but not more than 1/4 mile before the crossing. Prolong or repeat signal until engine occupies the crossing(s) ....
  
- (8) - o Approaching men or equipment on or near the track, regardless of any whistle prohibitions. After this initial

warning, sound whistle signal (4)  
intermittently until the head end of  
train has passed the men or equipment.

**FINDINGS:**

Based upon the record, the Board finds that the parties herein are the Carrier and the Employee Representative within the meaning of the Railway Labor Act, as amended. This Board is duly constituted by agreement of the parties and has jurisdiction over this dispute.

The Board finds there is clearly no dispute over whether Claimant failed to blow the whistle while passing the MOW crew standing by the heading in switch at Castle Hot Springs. Claimant blew her whistle at the HGX which the Organization maintained, gave sufficient warning to the Crew that the locomotive was approaching, especially so since the day was bright and the locomotive's lights were on bright.

There is however, a discrepancy over whether Claimant rang her bell while passing the crew, which act Claimant maintained she had performed. Ronnie Strong ("Strong"), Superintendent, Phoenix, Arizona, testified that he heard the exhaust from this train's bell but not the bell and there was no additional testimony offered

on the subject of the bell. The ringing of the bell, it should be noted, would not have fulfilled the rule requirement but would have alerted the crew of a passing train, thus offering some protection for the track crew.

The Carrier contended that Claimant failed to properly sound a warning for employees working in or around the track, as she was mandated to do, inasmuch as there were rail workers in the vicinity (ten feet) of the switch. Moreover, Claimant knew or should have known that failure to provide proper notice of the train's presence causes injuries and/or fatalities. And, failure to properly obey the rules, created an unsafe work condition.

The Carrier argued that "this was a potentially lethal situation", maintaining that the rules that Claimant violated, placed other employees in danger.

The Carrier relied upon the Award of Arbitrator Criswell, as set forth in PLB 5053, Award No. 15 which provides:

Unsafe acts, even if any injury does not occur at the moment, for work habits that eventually lead to injury to the employee, fellow workers, perhaps even to the public, and property damage. Injury results in loss to both the Carrier and the employee. In the case of the employee, it is the physical pain and disability. To the

Carrier it is the potential financial liability of an on-duty injury or, at a minimum, loss of productivity from one of its employees. Therefore, the Carrier argues rigorous enforcement of well-intended safety rules helps to stem injuries and consequent losses.<sup>1</sup>

and concluded that for safety violations dismissal is the appropriate discipline.

It should be noted that the dismissal in the instant matter, represents Claimant's second Level S violation within a one year period and under such circumstances as required by the Policy for Employee Performance Accountability ("PEPA") which provides under Dismissible Violations: Two serious rule violations within 36 months (or within 12 months, if the employee's record review period was reduced to recognize five years of injury and discipline-free service).

The above Level S discipline was assessed against the Claimant, based upon her alleged misconduct, namely, Claimant's occupation of the main track without authority which constitutes a serious safety violation and which the Carrier maintains, could have presented a disastrous effect upon fellow employees. The Carrier concluded that two such safety violations (the prior violation and the violation now under consideration) deserves dismissal.

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<sup>1</sup> As discussed in National Mediation Board PLB 6798, United Transportation Workers and Burlington Northern Santa Fe Railroad Co., Coast Lines, 2006 (Ilivicky, Neutral Member).

The Organization submits that Claimant is a long-term employee with thirty years of service with the same railroad and “only [has] six previous entries on her [service] record which violations, the Organization, contends, were minor and were handled with a “formal reprimand and a paper suspension.”

Clearly, there was no dispute that Grievant failed to abide by the “whistle rule”. However, the Organization argues that the whistle rule “fails to take into consideration ... the use [of] some common sense while ... passing by ... men standing in the clear of the siding.”

The Organization submits that the MOW workers covered their ears in order to prevent injury as a result of the noise generated by the train whistle.

In addition, Claimant’s conductor remained on the ground from the time he detrained to line the heading in switch and would remain in such position until the train rolled into the siding. Claimant determined that “blowing the whistle not only could, but would hurt their ears” and as a result, Grievant decided against compliance with the foregoing rules.

In addition, Claimant believed she was moving so slowly “that she would be able to

stop on a dime”, if the need arose. However, to insure that the employees were aware of her presence, Claimant turned on the engine bell in order to make her presence known.

Under the foregoing circumstances, the Organization concluded the discipline meted out to Claimant was “excessive, overly harsh and capricious”.

The Board finds that Claimant was guilty and in violation of the Rules, as charged. The violation of safety rules cannot be treated lightly, are serious and violations of safety rules require vigorous enforcement ... to reduce injuries, potential liability and disruption as well as the loss of productivity.<sup>2</sup>

The Board finds that however well intentioned Claimant’s actions were, Claimant substituted her judgment for the judgment of the Carrier, set forth by the Carrier’s rules which were established to ensure a safe workplace for all employees and cannot be disregarded.

However, the Board notes that Claimant believed she was acting properly and in the best interest of her fellow employees as well as the Carrier. Having noted the

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<sup>2</sup> Footnote 1, supra.

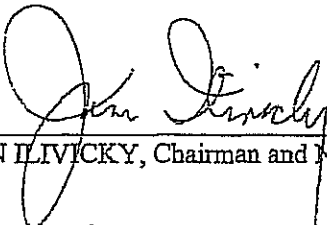
foregoing and aware of Claimant's length of service, the Board concludes that the penalty be reduced to a suspension of time served and that Claimant shall be restored to service after a period of retraining pursuant to the rules of the Carrier.

**AWARD:**

Claimant is guilty of violating the Rules as charged. However, based upon all of the circumstances herein, Claimant's dismissal shall be reduced to a suspension of time served and Claimant shall be restored to service after a period of appropriate training.

**ORDER:**

The Carrier shall comply with the above Award within thirty (30) days of the date of postmark.

  
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JOAN LIVICKY, Chairman and Neutral Member

  
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GENE L. SHIRE, Carrier Member

  
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STEPHEN D. SPEAGLE, Organization Member

DATED: 6-26-07

