

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 928**

BROTHERHOOD OF LOCOMOTIVE ENGINEERS)
) Case No. 437
and)
) Award No. 437
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK))

Martin H. Malin, Chairman & Neutral Member
M. B. Kenny., Employee Member
L. C. Hriczak, Carrier Member

Hearing Date: April 30, 2004

STATEMENT OF CLAIM:

Claim of Amtrak Passenger Engineer D. P. Signore (hereinafter "Claimant") for the rescinding of the discipline imposed of "termination from service, effective immediately" as stated in the decision letter dated November 17, 2003, over the signature of Superintendent, Road Operations – Central Division, Travis C. Hinton, 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 clearing of Claimant's personal record as to any reference relative to the alleged violation.

FINDINGS:

Special Board of Adjustment No. 928, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On October 29, 2003, Claimant was directed to report for an investigation on November 7, 2003. The notice charged Claimant with four violations. Charge 1 alleged a violation of Canadian National/Illinois Central U.S. Operating Rules, Second Edition, effective June 2, 2002, Rule 501, Speed. Charge 2 alleged a violation of Canadian National/Illinois Central U.S. Operating Rules, Second Edition, effective June 2, 2002, Rule 509, Calling Attention to Restrictions. Charge 3 alleged a violation of AMT-5, Rule 5010. Charge 4 alleged a violation of AMT-5, Rule 5302.

The hearing was held as scheduled. On November 14, 2003, the Hearing Officer found that Charges 1, 2 and 3 were proven. He found that the Charge 4 was not proven. Based on these findings, Carrier advised Claimant that he had been dismissed from service.

The incident giving rise to the charges on which Claimant was found guilty arose from his traveling at an excessive speed, failing to comply with the restricted speed of 25 miles per hour at MP 25.9, while operating Train # 59 between Memphis, Tennessee and Jackson, Mississippi, as established in CN/IC TBGO # 2340, on October 28, 2003. Claimant admitted in his testimony that he missed the speed restriction in the TBGO and exceeded the restricted speed. Claimant also admitted that he did not hold a job briefing with his crew prior to departure from Memphis, Tennessee. Accordingly, Carrier proved the charges by substantial evidence.

The critical question is the severity of the discipline. In contrast to Claimant who was dismissed, the other members of the crew were afforded informal handling and thirty-day suspensions. Furthermore, Claimant, who began his career with Carrier in 1988 and held an engineer roster date of May 29, 1992, had a good work record, which included service at two different times as a temporary road foreman of engines and service as an instructor of engineers. Claimant readily and forthrightly admitted his responsibility for the violations. Furthermore, although Claimant should have observed the speed restriction on the TBGO, the record reflects that the crew bringing Train # 59 from Carbondale, Illinois to Memphis was responsible for faxing the TBGO to Memphis before departing Carbondale. However, the TBGO was not faxed to Memphis. Had it been faxed, Claimant would have had a much longer period of time to review it than he actually had.

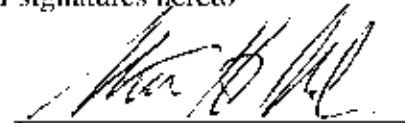
Considering all of the above factors, we find that the penalty of dismissal is excessive and Claimant should be afforded one last chance to demonstrate that he can be a careful and safe employee who complies with all operating and other rules. Claimant shall be reinstated to service with seniority unimpaired but without compensation for time held out of service.

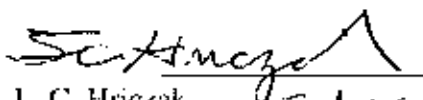
AWARD

Claim sustained in accordance with the Findings.

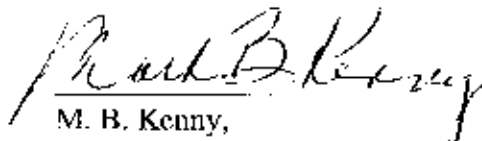
ORDER

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto


Martin H. Malin, Chairman


L. C. Hriczak,
Carrier Member

I DISSENT


M. B. Kenny,
Employee Member

Dated at Chicago, Illinois, August 27, 2004.