

BEFORE
PUBLIC LAW BOARD NO. 7353
CASE NO. 67
AWARD NO. 67

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN)	
)	PARTIES TO THE
vs.)	DISPUTE
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

"Claim on behalf of Locomotive Engineer G.S. Feamster, ID #199859, requesting reinstatement to active service with seniority unimpaired, compensation for all lost earnings since being removed from active service May 31, 2011, restoration of all employment related benefits, including Railroad Retirement benefits, vacation and personal leave entitlement, and to have record expunged of all charges relating to the incident made the subject of the hearing held on June 22, 2011 at Clifton Forge, Virginia."

FINDINGS:

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 16, 2009, as amended, that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings.

After a thorough review of the record, the Board concludes that on May 21, 2011, the Claimant worked as a Locomotive Engineer at Covington Yard on a road switcher. While operating a train that day, in a restricted speed zone, it ran into the rear of another train, causing a derailment. The investigation hearing was scheduled for June 8, 2011, but was postponed by agreement and ultimately held on June 22, 2011.

Following the close of the disciplinary investigation, on July 15, 2011 the Carrier dismissed the Claimant from service for violating CSX Transportation Signal Aspects and Indications Rule 1290.

This Operating Rules as produced in the record, consists of a table of signal aspects, which illustrates the signal indications and then shows the name "Restricting" and the indication "Proceed at Restricted Speed."

Organization's Position:

The Organization says that the Claimant was very forthright and honest in both his statement given at the time of the incident and in his testimony throughout the hearing. He indicated remorse immediately and consistently.

The Organization stresses the importance of the facts in this case. The Claimant was working with a new Conductor. The train was backing up with approximately 10 cars and 2 locomotives in the consist. The locomotive from which the crew was operating had the long hood forward. They had stopped at the Restricting signal and then proceeded at Restricted Speed, knowing that there was a grain train ahead. The Claimant was seated in the left seat. They rounded a curve to the right, and the Claimant lost sight of the track ahead. At some point, the Conductor saw the rear of the grain train, through the right-hand window, and told the Claimant to stop. The Claimant placed his train in emergency but was unable to stop before hitting the grain train.

They say that this is his first violation of this nature during his 15 years of service with the Carrier. He did have one prior serious violation, for which he signed a waiver and served a 5 day suspension. Therefore, they say, this incident does not merit termination of employment and they urge substitution of a lesser penalty.

Carrier's Position:

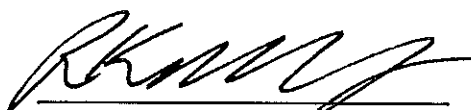
The Carrier says that the Claimant admitted guilt. Therefore, they say the only issue is the quantum of discipline. They say that their IDPAP was followed and that the discipline assessed was not arbitrary nor unreasonable.

Result:

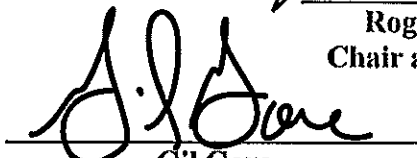
There is no doubt that the Carrier has met its burden of proof, and this was a very serious rule violation. In mitigation, the Claimant displayed honesty and contrition immediately. He is a relatively long-term employee with a relatively clear discipline record. In all the circumstances, this Board finds that termination was excessive, notwithstanding the Carrier's undisputed right under IDPAP to dismiss employees for major violations. Therefore, the Claimant shall be reinstated to service with his seniority unimpaired, but without compensation for the time he was held out of service. The Claimant is forewarned that any further major offenses could result in termination of his employment under IDPAP.

AWARD

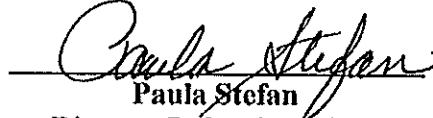
The claim is sustained, in part, as outlined above.



Roger K. MacDougall
Chair and Neutral Member



Gil Gore
Vice-President
Organization Member



Paula Stefan
Director Labor Relations
Carrier Member

Dated: 12/21/2012

At: Chicago, IL