

NATIONAL RAILROAD ADJUSTMENT BOARD

Form 1

FIRST DIVISION

Award No. 24216

Docket No. 43876

93-1-92-1-B-1902

The First Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
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(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"Engineer Thorstenson be reinstated immediately with seniority unimpaired: paid for all time lost, and that the notation relative to this incident be removed from his personal record."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On October 19, 1990, Claimant was called for service as Engineer on a coal train designated as Extra 9234 East, which departed Dickinson, North Dakota, at 6:05 p.m. Claimant's train was operating behind Extra 9208 East. Claimant was operating under track warrants, authorizing him to proceed to Lyons, North Dakota, where he was to hold the main line, meeting two westbound trains.

When Claimant arrived at Lyons, the first westbound train was already in the siding. Extra 9208 East had stopped on the main track at Lyons, adjacent to the westbound train, because the eastbound train ahead of it had stopped at a signal at Mile Post 4. This caused Claimant to receive a red signal at Signal 9.4, which required him to proceed at restricted speed, which is defined as follows:

"A speed that will permit stopping within one half the range of vision; short of train, engine, railroad car, on-track equipment, stop signal, derail or switch not properly lined, looking out for broken rail, not exceeding 20 MPH."

Claimant dimmed the headlight on his locomotive as he approached the westbound train, putting it back on bright after passing the head end. When the light brightened, Claimant saw the caboose of Extra 9208 East ahead of him. Although he placed the train in emergency, he was unable to stop before his train collided with the train ahead. The collision created an exploding fireball, destroying the caboose and killing the Conductor in it. Additionally, all three diesel units, and five cars of Claimant's train were derailed and damaged; 20 cars, including the caboose, of Extra 9208 were derailed and damaged; and 5 cars of the train in the siding were derailed and damaged. The total property cost of this collision was approximately \$1,250,000.

Following an Investigation, Claimant was dismissed from the Carrier's service effective December 4, 1990. At the Investigation, Carrier introduced recording tapes which were recovered from the three units of Claimant's train. These tapes showed that the train was going approximately 31 MPH when Claimant put it into emergency, and approximately 26 MPH at the time of impact. It was also established the electricity on the caboose of Extra 9208 East had failed. The train's rear end markers, therefore, were not illuminated. According to Claimant, there had been fusees displayed on the caboose when he was required to stop behind Extra 9208 East earlier in the trip, but none was seen when the train was stopped at Lyons. According to Carrier, Claimant should have realized where the train was stopped based upon radio communications and the signals.

The Organization has raised two procedural issues, asserting Claimant was denied a fair and impartial Investigation. First, the Organization notes Claimant and his Brakeman received Investigation notices which were separate from the other employees under charge, even though a single Investigation was held. Carrier explains this was due to these two employees being the only ones held out of service pending the Investigation. Secondly, the Organization argues the wording of the charge against Claimant was prejudicial because it did not contain the language "your responsibility, if any," as is the Carrier's practice. We do not consider either of these objections sufficient to provide a basis for finding Claimant was denied a fair and impartial Investigation. There is no indication Carrier prejudged Claimant in any way.

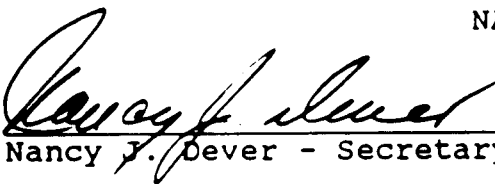
With regard to the merits, we find there is substantial evidence in the record to support the charge. Carrier reasonably relied upon the recording tapes from Claimant's locomotives to conclude he was operating at excessive speed after passing the red signal. While the failure to protect the rear of Extra 9208 East might have been a factor in this case, it is possible the collision could have either been avoided or been less severe had Claimant been operating at restricted speed.

We do not agree, though, that permanent dismissal is appropriate. Despite the seriousness of this collision, measured both in the damage to property and the loss of the Conductor's life, Carrier must consider the work record of Claimant prior to assessing discipline. Other than this incident, all indications are that Claimant is a very competent Engineer. At the investigation, his representative read letters of commendation from a current and previous supervisor. Additionally, a letter of support was sent by 16 fellow employees attesting to "the conscientious, safe and responsible manner" in which Claimant has performed his duties. Accordingly, we direct the Claimant be reinstated to service with seniority rights unimpaired, but without compensation for time lost.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest: 
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 7th day of May 1993