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Summary Record

Case No. 40

SPECIAL BOARD OF ADJUSTMENT NO. 971

AWARD NO. 40

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

VS.

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

Lemon, J. W., Engineer W&A Seniority District No. 2, Nashville Division, was relieved of duty on December 3, 1985. Subsequently a charge letter was issued on December 5, 1985, wherein he was charged with responsibility in connection with Train N90103, engine 5913, reportedly colliding with the rear of V34030, 8513 South, on west track south of Kennesaw, Georgia, at approximately 3:40 p.m., eastern standard time, Tuesday, December 3, 1985. Pursuant to charge letter, a formal investigation was conducted on December 9, 1985, and pursuant to this investigation, Engineer Lemon was notified by letter dated December 30, 1985, that he had been

dismissed from service of the Seaboard System Railroad. It is requested that Engineer Lemon be reinstated with all seniority rights and paid for all time lost, Article 31, Engineers' Agreement.

STATEMENT OF FACTS:

Claimant Lemon was employed as a switchman by the carrier on July 27, 1969. Subsequently he was promoted to locomotive engineer on September 12, 1974.

On December 3, 1985, Engineer Lemon was assigned to Train N901 operating out of the Wauhatchie Yard, Chattanooga, Tennessee, en route to Tilford Yard, Atlanta, Georgia. Claimant's train consisted of 3 locomotives, 46 loads and 32 empties, weighing approximately 6,089 tons. After departing Wauhatchie Yard, Engineer Lemon experienced difficulty on at least three occasions with the train brakes, which were not providing the desired retardation.

While near Graysville, Georgia, Engineer Lemon received an alarm bell indicating a malfunction in one of the locomotives in his consist. Claimant elected to allow the train to continue under the operation of Brakeman McCormick while he investigated the malfunction. After eliminating the problem, claimant returned to the lead locomotive and observed that Brakeman McCormick was having no difficulty in operating the train. Recalling that the brakeman had some experience in handling trains, claimant elected to position himself in the brakeman's seat and observe Brakeman McCormick's proficiency in functioning as the engineer.

Shortly thereafter claimant's train received an approach medium indication at Acworth, Georgia (milepost 32.8). This was followed by a medium clear indication into the south track at Moon Station, an approach indication at milepost 29.4 and a stop indication at Kennesaw, Georgia. Brakeman McCormick executed all of these maneuvers in a satisfactory manner, bringing the train to a successful stop as required. After a few minutes delay at Kennesaw, claimant's train received an approach signal, whereupon claimant directed Brakeman McCormick to continue operating the train from the engineer's position. After the train had reached a speed of approximately 20 miles per hour claimant presumed that he heard a train ahead of them on the track and immediately instructed Brakeman McCormick to engage the dynamic braking action. Brakeman McCormick was in the process of complying with these instructions when both men observed that the intermediate signal, approximately 26-30 car lengths ahead was indicating restricted proceed. At that same point in time, both trainmen observed the caboose of Train V34030, 8513 South standing on the track near the signal. Brakeman McCormick immediately engaged the emergency braking system and sounded a warning to the other crew members on the caboose. Sensing a collision both men abandoned the train.

As a result of the collision on December 5, 1986, a formal notice of charge was issued to Engineer Lemon by Assistant Superintendent W. J. Lockwood, stating in pertinent part as follows:

"The purpose of this investigation is to develop facts and place responsibility, if any, in

connection with your Train N90103, engine 5913, reportedly colliding with the rear of V34030, 8513 South, on west track south of Kennesaw, GA, at approximately 3:40 p.m., EST, Tuesday, December 3, 1985, and all circumstances relating thereto."

Following several postponements, the investigation was conducted on December 9, 1985. Following such investigation, on December 30, 1985, Superintendent T. M. Purvis issued a notice of discipline, stating in pertinent part, as follows:

"The investigation revealed that your train, being operated by the brakeman while you were occupying the brakeman's seat, left Kennesaw, Georgia on an 'approach' indication, attained a speed of 32 miles per hour before passing the intermediate signal indicating 'restricted proceed.' Evidence shows that the brakes were placed in emergency shortly before passing this intermediate signal. A distance of 920 feet beyond this signal, your train struck the rear of a standing coal train causing injury to personnel and heavy equipment damage.

"It is clearly evident that by permitting Brakeman McCormick to operate this locomotive, you are in violation of Operating Rule 961 relating to permitting unauthorized persons to operate the locomotive.

"As engineer you are responsible for the operation of the locomotive. The obvious manner in

which your locomotive was operated places you in violation of Operating Rules 285, requiring your train to proceed past an 'approach' signal prepared to stop at next signal, as well as Rule 291, requiring you to operate past a 'restricted proceed' indication at a speed that will permit stopping in one-half range of vision, short of train ... etc. You were also in violation of that portion of Operating Rule 230 stating that indications of signals convey no authority for trains to exceed speed restrictions established by other rules.

"Additionally, the transcript discloses that you were in violation of Operating Rule 956 relating to the safe operation of your engine.

"Your actions involving the operation and subsequent collision of your locomotive are of the gravest nature. It is fortunate indeed no fatalities were involved.

"For your failure to comply with the above mentioned rules and directives, you are hereby dismissed from the service of the Seaboard System Railroad."

Such decision has been timely and properly appealed to us for resolution.

RELEVANT OPERATING RULES:

Rule 34

All members of the crew located in the operating cab of an engine must, and other members of crew will when practical, communicate to each other in an audible and clear manner the name of each block and interlocking signal affecting movement of their train as soon as the signal is clearly visible and again just before passing that signal.

Rule 230

Indications of signals convey no authority for trains to exceed speed restrictions established by train order, timetable, special instructions, or other rules.

Rule 285 APPROACH

Proceed, trains exceeding 40 miles per hour must at once reduce to that speed preparing to stop at next signal until it can be plainly seen that indication of next signal allows train to proceed.

Rule 291 RESTRICTED PROCEED

Proceed at a speed that will permit stopping within one-half the range of vision, short of train, engine, car, obstruction, stop signal derail or switch not properly lined, looking out for broken rail but not exceeding 20 miles per hour until engine reaches next governing signal or end of signaled territory.

Rule 956

The engineer is responsible for the safe and efficient operation of the engine in his charge. He must not leave the engine during his tour of duty, except in case of necessity and then only when necessary precautions have been taken to protect the equipment.

Rule 961

Engineers must not permit unauthorized persons to operate the engine. The fireman or other authorized employee may be permitted to do so with the permission and in the presence of the engineer, who will be responsible for the proper operation of the engine and handling of the train. Road foreman of engines are authorized to operate the engine to instruct or for other purposes.

FINDINGS:

The admissions by claimant during the investigation are dispositive of the issue regarding culpability, reserving to us the sole question of the appropriateness of termination for such rule infractions. Although we consider claimant's actions to have compromised the safety of equipment and personnel, we cannot categorize such conduct as gross negligence. The record indicates that allowing brakemen to handle trains under the direct supervision of an experienced engineer was an accepted practice in the past. The avowed

purpose was to identify and certify potentially qualified candidates for promotion to engineer vacancies when they developed. While we acknowledge that the temporary transfer of engineer duties under these circumstances, even with the tacit approval of supervision, does not completely relieve the engineer from the duty imposed by the carrier's operating rules. An engineer's prime responsibility is to ensure that the equipment entrusted to him is operated in a safe and proper manner. However, to terminate a long-term exemplary employee, with an exemplary record, because he engaged in such a practice, under the unique circumstances here involved, is, in our judgment, excessive. We believe that the legitimate objectives of discipline will be served if the claimant is now reinstated to service without pay, but with his seniority unimpaired.

Claimant was afforded a fair and impartial investigation in accordance with the terms of the agreement.

AWARD:

Claimant is to be reinstated without back pay but with seniority unimpaired. Carrier shall make this award effective within 30 days from the date hereof.

DON B. HAYS, Neutral Member

May 18, 1988

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