

PUBLIC LAW BOARD NO. 7239

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

MidSouth Rail Corporation (Kansas City Southern Rwy.)

STATEMENT OF CLAIM:

Claim of MidSouth Rail Engineer P.A. Richardson for the removal of the sixty (60) day suspension, consisting of 30-days actual and 30-days record suspension for the alleged violation of Kansas City Southern General Code of Operating Rules 6.3.1 – Maximum Authorized Speed and 1.47 – Duties of Crew Members, Kansas City Southern Railway's Air Brake and Train Handling Rules and Instructions 109.1, Section 5, Item B for allegedly failing to perform his duties in a safe and proper manner by allegedly failing to comply with Form A, temporary speed restriction in connection with exceeding the maximum authorized speed limit by at least 10 MPH at or near Mile Post 155.4, Houghton, LA at approximately 7:50 a.m. on February 23, 2009 while serving as Engineer on Train MSHAR-23 with all notations of discipline expunged from his personal work record and compensation for all time lost, including loss of earnings due to attending the investigation. (Carrier File No. M0109-8942)

OPINION OF BOARD:

The essential facts of this case are not in dispute. At the time of the incident giving rise to his discipline, Claimant was assigned as a Locomotive Engineer at Shreveport, Louisiana. On February 23, 2009, Claimant was working as an engineer on Train MSHAR-23, from Shreveport, Louisiana to Jackson, Mississippi. The crew

received a job briefing when they went on duty at 5:00 a.m., including various temporary speed restrictions on their route. One of those speed restrictions was at MP 155.4, and their "Form A" noted that there were no flags at that location to alert them to the approaching speed restriction. As the train approached MP 155.4, it did not slow to the speed restriction of 25 miles per hour and proceeded through the location; rather it was moving at approximately 44 miles per hour. When the crew reached the siding at Gibsland, LA, Carrier's Manager Operating Practices met the crew to complete an interview regarding the incident. Following the interview, Claimant and his conductor were given a drug test (which proved negative) and removed from service pending an investigation.

By letter of February 29, 2009, Claimant was notified to attend a formal investigation as follows:

...to ascertain the facts and determine your responsibility, if any, in connection with an incident that occurred on February 23, 2009, at approximately 7:50 a.m., while serving as a crew member of Train MSHAR-23. It is alleged that you failed to properly perform your duties in a safe and proper manner by failing to comply with Form A, temporary speed restriction, therefore exceeding the maximum authorized speed limit by at least 10 MPH. This incident occurred at or near Mile Post 155.4, Haughton, LA....

The investigation was held on Thursday, March 5, 2009. On March 9, 2009, Claimant was notified that he had been found guilty of being in violation of KCS General Code of Operation Rules 6.31 – Maximum Authorized Speed, and 1.4 –

Duties of Crew Members, as well as KCS Train Handling Instructions 109.1, Section 5, Item B, for failing to comply with the temporary speed restriction. He was informed that he was assessed the discipline of a sixty (60) day suspension, thirty (30) days actual suspension and thirty (30) days record suspension.

The Organization filed a claim protesting the discipline on April 7, 2009. That claim was denied on April 20, 2009. The Organization appealed the denial and the claim was then progressed according to the Parties' agreement and is properly before the Board.

The Carrier maintains that since the crew admitted their error both in the initial discussion with the Manager Operating Practices and at the hearing, the discipline assessed is not excessive. In addition, the Carrier notes that the maintenance of safety is paramount, and failure to observe track speed restrictions can often lead to serious consequences.

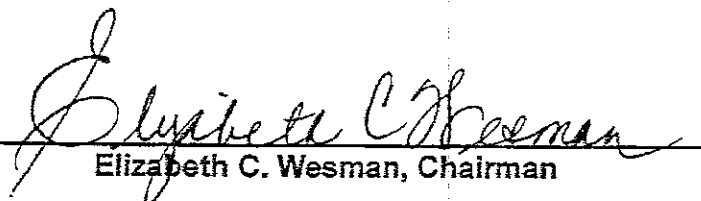
The Organization has protested that, in light of the fact that there were no warning flags displayed prior to the restricted speed area, the discipline assessed is excessive. Moreover, it insists that the crew's honesty worked against them and that rather than being rewarded, they were punished. In addition, the Organization objects to the prosecutorial manner in which the hearing officer conducted the hearing and maintains that it renders the hearing unfair and procedurally suspect.

The Board has reviewed the evidence in this case, both documentary and testimonial. Under the circumstances, while we commend the crew on their honesty, we do not find that the discipline assessed was excessive. Maintenance of speed restriction is a serious matter, and whether or not there were adverse consequences this particular time, the potential for damage or injury is sufficiently serious to warrant strong discipline for failure to follow instruction on the crew's Form A.

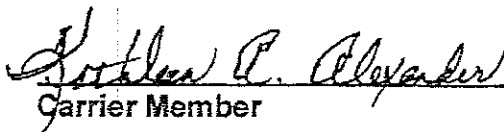
Upon reading the transcript of the investigation, however, we do find that the hearing officer became unnecessarily and unprofessionally belligerent during some of the witnesses' testimony. (See, for example, Tr. pp. 26-27). The Board would caution the hearing officer that such behavior casts a pall on the procedural integrity of the investigative process and can, in some circumstances, sufficiently poison the hearing as to create a fatal procedural flaw.

AWARD

Claim denied.


Elizabeth C. Wesman, Chairman


Organization Member


Carrier Member

Dated September 11, 2009