AWARD NO. 26
NMB CASE NO. 26

PUBLIC LAW BOARD NO. 7239

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

And

MidSouth Rail Corporation (K C S)

STATEMENT OF CLAIM:

Claim of MidSouth Rail Engineer George Roberts for the removal of a 30 day suspension, 5 actual and 25 record and payment for 5 days plus the 1 day attending the investigation, which was assessed on December 16, 2009 in connection with an alleged violation of GCOR 6.22 and 6.31.

OPINION OF BOARD:

At the time of the incident giving rise to this claim, Claimant G. W. Roberts was working as the Engineer on Train 2RGP106-16 out of Gulfport, Mississippi. Between 7:39 a.m. and 7:46 a.m. Claimant was operating between MP 6.4 and MP 8. As a result of the Roadmaster's report of rail burns, the MOP downloaded the event recorder for Claimant's engines. During his analysis of the download, the MOP noticed that Claimant's train was recorded at speeds of 12-15 miles per hour during the times cited above. The maximum authorized speed for that location was 10 miles per hour.

Claimant was notified by letter of November 25, 2009 to appear for a formal investigation into the following charges:

> ...in connection with an incident that occurred on November 16, 2009, from approximately 7:39 a.m. – 7:46 a.m. It is alleged that while serving as a crew member of Train 2RGP106-16, you failed to properly perform your duties in a safe and proper manner by exceeding the maximum authorized speed on several occasions during your time on duty. This incident occurred at or near Milepost 6.4 – 8, Gulfport, MS.

An investigative hearing was held on December 4, 2009. Following that hearing, Claimant was notified that he had been found guilty as charged and was assessed a thirty (30) day suspension, with five (5) days to be served as actual time off and twenty-five (25) days' record suspension to be recorded in his personnel file as an actual suspension.

The Organization appealed Claimant's discipline on January 8, 2010. That claim was denied by the Carrier on January 6, 2010. It was subsequently progressed according to the Parties' Agreement, up to and including conference on the property, after which it remained in dispute. It is therefore properly before the Board for resolution.

The position of the Carrier is that Claimant received a fair hearing, and that the charges against him were proven. It contends that the distance Claimant traveled came to a combined total of more than 6000 feet going above the posted speed. Under the circumstances, the Carrier insists, the discipline assessed was reasonable and warranted.

The Organization maintains that the charges were not proven. It notes that this is an up-hill area of track with which Claimant was not very familiar, and contends that he did his best to deal with both grade and speed. Moreover, it argues that the speeding was neither negligent nor willful. Thus, it asserts, the discipline assessed was unfair and

inappropriate.

The Board has read through the transcript and has examined the documentary evidence. We disagree with the Organization that Claimant's alleged unfamiliarity with the territory excuses his admittedly exceeding the speed restriction in the applicable daily track bulletin. If anything, such unfamiliarity should have made him particularly cautious with respect to adherence to the published speed restrictions.

There is nothing on this record to convince the Board that it should ameliorate or overturn Carrier's assessment of discipline in this matter. Accordingly, the claim is denied in its entirety.

AWARD

Claim denied.

Elizabeth C. Wesman

Elizabeth C. Wesman, Chairman

Organization Member

Donald E. Ewing

Carrier Member

Dated 7/27/10