

AWARD NO. 34  
NMB CASE NO. 34

PUBLIC LAW BOARD NO. 7239

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Kansas City Southern Railway Company  
(former MidSouth Railway)

STATEMENT OF CLAIM:

Appealing the sixty (60) day suspension – consisting of thirty (30) days active and thirty (30) day record suspension of SouthRail Engineer Joe E. Orr for the alleged violation of Kansas City Southern Railway Company General Code of Operating Rules 5.4.1 – Temporary Restrictions and 6.31 – Maximum Authorized Speed and the six (6) months revocation of his Engineer Certification under 49CFR 240.117 (e) 2 – in connection with an incident that occurred on October 13, 2010 at approximately 7:00 a.m. when Engineer Orr allegedly failed to perform his duties in a safe and proper manner by allegedly failing to comply with a temporary speed restriction at or near Mile Post 87.2, Whitfield, MS while serving as Engineer on Train M-ARSH-12.

OPINION OF BOARD:

The Claimant, Joe E. Orr, was first employed by the Carrier in its Train Service on February 24, 1997. He was eventually promoted to locomotive engineer. On the date of the incident that is the basis for his discipline and this claim, the Claimant held a turn out of Artesia, Mississippi. On October 13, 2010, he was operating Train ARSH-12

between Artesia and Jackson, Mississippi. There is no controversy on this record that the crew had been provided with a Train Bulletin indicating a 10 MPH temporary slow order over a bridge at MP 77.2 on the Meridian Subdivision. After the train had passed that Mile Post, an Engineering Department employee contacted Carrier's Transportation Supervisors and told them that a train had operated through the speed restriction at well above the speed limit. Upon determining that it was Claimant's train, the investigator downloaded the event recorder from ARSH-12. The event recorder indicated that Claimant's train entered the restricted zone at approximately 22 Miles Per Hour.

By letter of October 15, 2010, Claimant was notified to appear for a formal investigation into the following charges:

...in connection with an incident that occurred on October 13, 2010, at approximately 7:00 a.m. While serving as a crewmember of Train M-ARSH-12, it is alleged that you failed to properly perform your duties in a safe and proper manner by failing to comply with a temporary speed restriction at or near Milepost 87.2, Whitfield, MS.

An investigation was held on October 25, 2010. In a letter dated October 29, 2010, Claimant was notified that he had been found guilty as charged and was assessed a sixty (60) day suspension, of which thirty (30) days were to be served as actual time and thirty (30) days of which would become a record suspension in his personnel file.

It is the Carrier's position that the facts in the case prove Claimant's violation. It contends that he had a full and fair investigation, and that there can be no doubt that he was guilty as charged. The Carrier also asserts that, based upon the Claimant's past discipline record, the discipline assessed was not unreasonable and was warranted

under the circumstances.

The Organization points out that the Conductor on the train in question was a trainee, and overlooked the speed restriction. He admitted to sharing culpability with the Engineer. Thus, the Organization insists, since there was no resultant injury or damage, the discipline assessed was excessively harsh. It notes that the crewmembers were forthcoming and apologetic and did not try to make excuses for their mistake. Moreover, the Organization argues, the Claimant is generally a safe and careful employee and should not be so severely disciplined for a minor oversight.

The Board has reviewed the record in this case including documentation and transcript from the investigation. It is to the Claimant's credit that he did not deny the infraction of which he was accused, and it is true that there was no attendant damage to equipment or any personal injury. Notwithstanding those facts, however, we do not find that the Carrier's assessment of discipline with either excessive or unwarranted. It cannot be over emphasized that speed restrictions are a serious safety precaution, and excessive speed always presents the possibility of equipment damage or injury. The evidence against Claimant is clear and convincing, and we do not disagree with the Carrier regarding quantum of discipline assessed. Accordingly, the instant claim is denied in its entirety.

AWARD

Claim denied.

*Elizabeth C. Wesman*

Elizabeth C. Wesman, Chairman

*Cole W. Die*

Organization Member

*[Signature]*

Carrier Member

Dated 6/20/2013