

PUBLIC LAW BOARD NO 7026

AWARD NO. 20
CASE NO. 20

PARTIES TO
THE DISPUTE

UNITED TRANSPORTATION UNION
(COAST LINES)

VS.

BNSF RAILWAY COMPANY

ARBITRATOR: John L. Easley

DECISION: Claim Denied

DATE: July 7, 2008

STATEMENT OF CLAIM:

Claim of Southwest Division Conductor J. V. McKinney for removal of Level S, thirty (30) day record suspension from his personal record and pay for any time lost involved in this incident.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by the agreement of the parties, that the Board had jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Under date of April 12, 2007, Conductor J. V. McKinney, hereinafter referred to as the Claimant, was instructed to attend a formal investigation as follows in pertinent part:

"Attend formal investigation in the BNSF Conference Room, 1535 North Park Drive, Winslow, Arizona, on Wednesday, May 2, 2007, at 11:00 A.M. (MDST), with your representative and witness(es), if desired, to develop the facts and place responsibility, if any, in connection with possible violation of Rules 1.1.2, 1.6, 1.47, 6.22, 6.23 and 6.31 of the General Code of Operating Rules, Fifth edition, effective April 3, 2005, Rule 9.1.6 Signal Aspects and Indications of the BNSF System Special Instruction, All Subdivisions, No. 13, in effect October 29, 2006, and Southwest Division General Notice No. 323, effective January 3, 2007, as supplemented or amended, concerning your alleged failure to control the speed of your train according to signal indication after passing intermediate signal at MP 451.80, approximately 1:57 A.M. (MDST), April 6, 2007, your alleged failure to warn others by radio of possible obstruction to adjacent main track, and your alleged failure to complete the proper report regarding an Engineer Induced Emergency, while working as crew on Train S-LHACH11-05A, on the Seligman Subdivision."

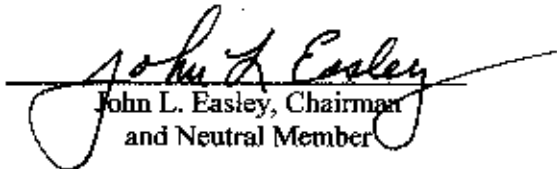
The Claimant was in charge of Train S-LHACH11-05A, Engine 5090 train consist of 84 loads no empties, 7288 tons. On duty in Needles, California destined Winslow, Arizona, en route the Engineer placed the train air brake system into emergency stopping at Mile Post 448.79.

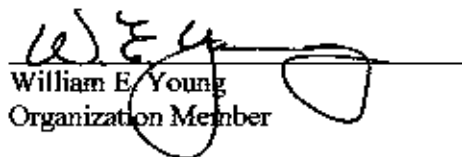
Prior to the emergency application of the braking system the Claimant advised the Engineer that approach signal at MP 451.8 displayed a double yellow aspect and not to exceed 40 MPH when passing the next signal. The Engineer had the throttle in run 8 and kept it there until he crested the hill at Yampai where he reduced the throttle to zero and started to bring the engine to full dynamic braking. The train speed was increasing and the Claimant warned the Engineer to get the speed under control as the next signal could be a single yellow. The Engineer did not take any action as he mistakenly thought the next signal was clear. The Claimant again warned him to reduce the train speed and the engineer finally took positive action after passing the next signal at 51 MPH. The Claimant made the required radio broadcast warning anyone in the vicinity that the train was in emergency and to exercise caution, he also attempted to advise the train dispatcher of the incident but was unable to contact him.

OPINION OF THE BOARD:

The Claimant was alert and knowledgeable of the rules, however he chose to exercise his own judgment and not use the emergency brake valve as in his view to place the train into emergency could cause a derailment. General Code of Operating Rule 1.47 item 3 is clear in its intent... "must immediately take action to ensure safety, using the emergency brake valve to stop the train, if necessary." The Engineer was not controlling the speed of the train even after being advise to do so by the Claimant. The Claimant should have exercised his option to "Pull the air" and make an emergency application of the brakes.

AWARD: Claim Denied.


John L. Easley, Chairman
and Neutral Member


William E. Young
Organization Member


Melissa A. Beasley
Carrier Member