

PUBLIC LAW BOARD NO 7026

AWARD NO. 07
CASE NO. 07

PARTIES TO
THE DISPUTE

UNITED TRANSPORTATION UNION
(COAST LINES)

VS

BNSF RAILWAY COMPANY.

ARBITRATOR: John L. Easley

DECISION: Claim Denied

DATE May 25, 2007:

STATEMENT OF CLAIM:

Claim of California Division Conductor J. M. Lambert Jr. for removal of Level S, 54-Day Suspension from his personal record and pay for all time lost during the actual suspension and while attending the investigation with out deduction of any outside earnings.

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 July 22, 2005, Conductor J. M. Lambert Jr. hereinafter referred to as the Claimant was advised to attend a formal investigation as follows in pertinent part:

“You are hereby notified to attend formal investigation in the Trainmaster’s office, at 834 Front Street, Needles, California, at 0900 hours on Wednesday, August 03, 2005, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged being found sleeping while on duty, careless of the safety of others and speeding which resulted in a red signal violation on July 7, 2005 at EBCS East Goffs at approximately 1730 hours; in possible violation of Rules 1.11, 1.6 item 1, 2.10, 9.5, 9.1.8, 9.1.15 and 10.1 of the General Code of Operating Rules Fifth Edition in effect April 3, 2005.”

The crew which consisted of Locomotive Engineer J. M. Lambert Sr., Train conductor A. R. Alcalá and the Claimant who was making a district familiarization trip.

They conducted a job briefing at the initial terminal at which time all concurred that the claimant would ride in the second unit. En route, at West Goffs they went by the East Bound Control Signal without permission from the control station.

The Engineer stated that he had nodded off and was awakened by the Conductor but too late to stop in advance of the signal.

The Conductor stated that he had called the advance signal as yellow, received a reply from the Engineer and then went into the nose of the engine to wash his hands after eating his lunch. When he climbed back into the cab he saw the red block and hollered at the engineer that they had a red signal.

The Claimant in the second unit didn't know there was a problem until the train went into emergency stop.

The down load from the locomotive indicated that the throttle setting was run eight (maximum) prior to, and passing the yellow block and until about three tenths of a mile in advance of the red signal with a time sequence of three minutes fifty two seconds.

The Train Conductor testified that he tried to call the Dispatcher about the time the train came to a halt but was not able to get through, he tried again about eleven minutes later and advised him of the red block incident. The records in the dispatchers office reflect the call was twenty five minutes after the train went by the red signal.

OPINION OF THE BOARD:

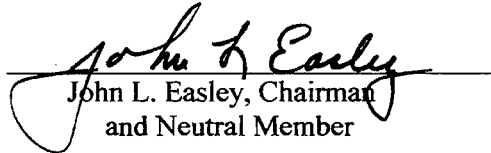
The Organization raised several procedural questions during property handling and after a careful review we fail to find any merit in their positions. The hearing was conducted properly, necessary witnesses were present and overall is considered as fair and impartial.

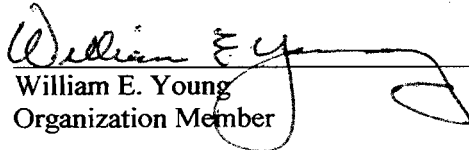
The accusation of dishonesty in relating the events leading up to and subsequent to the actual incident have a strong foundation. The crew wants this Board to believe that the engineer would be agreeable to placing his son on a trailing unit when he is making a familiarization trip when he could be on the lead unit with him. The Conductor would have us believe that after they passed a yellow signal, knowing the next could be a control signal displaying red. He went down into the nose of the engine to wash his hands using a bottle of water and paper towels.

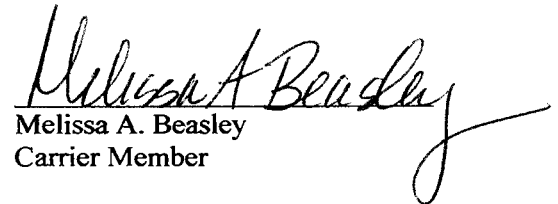
Without questioning the veracity of the statements made by the crew members,
the Board holds that the discipline assessed was warranted and will not be modified.

AWARD:

Claim Denied.


John L. Easley, Chairman
and Neutral Member


William E. Young
Organization Member


Melissa A. Beasley
Carrier Member