

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEER AND TRAINMEN

STATEMENT OF CLAIM:

"Request the removal of level 5 discipline from the record of engineer T. B. Snowden with him being made whole, which includes but not limited to lost earnings, all vacation rights, cobra payments and any other penalties associated with this discipline."

FINDINGS:

On March 28, 2005, at approximately 15:28 hours, Carrier Officer MTO Scott David and MOP D. G. Anderson, in accordance with GCOR 5.4.2B, set up a Yellow Board Test at MP 106.5 on the Livonia Subdivision. Yellow Board Test states in pertinent part:

"When a yellow flag is displayed and the restriction is not specified by a track bulletin, track warrant or general order, once the train is two miles beyond the yellow flag, crew members must:

- 1. Continue moving the train but at a speed not exceeding 10 MPH.*
- 2. Resume speed only after the rear of the train has:*
 - a. Passed a green flag, or*
 - b. Traveled four miles beyond the yellow flag and the train dispatcher has verified that no track bulletin or track warrant is in effect specifying a temporary speed restriction at that location."*

Also, on March 28, 2005, at that same time and location, T. B. Snowden was on duty, working as Engineer on Train QLIWX-28. At MP 104.5 -- after going two miles beyond the Yellow Board located at MP 106.5 -- Train QLIWX-28 was traveling at 37 MPH, or 27 miles above maximum authorized speed.

On April 5, 2005, Carrier issued Engineer Snowden a certified letter, directing:

"You are hereby instructed to report to the conference room, 5245 River Road, Avondale, LA on April 14, 2005 at 10:00 a.m. for a formal investigation to develop the facts and determine individual responsibility, if any, in connection with allegedly failing to adhere to limitations concerning train speed after passing a yellow flag, not specified in writing, at Mile Post 106.5, and exceeding the maximum authorized limit by more than

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10 miles per hour at Mile Post 104.5. This alleged incident occurred while working as crewmember on the QLIWX-28 on March 28, 2005 at approximately 15:28 hours., on the Livonia Sub.

This investigation will be conducted in conformity with the applicable schedule agreement and you are entitled to representation as provided in that agreement.

Please be advised that this investigation will also satisfy the procedural requirements as specified by 49 CFR Part 240, Qualification and Certification of Locomotive Engineers. Depending on the results of this investigation, your qualification requirements for the position of Locomotive Engineer may be affected.

After mutually agreed upon postponement, formal investigation was held on June 15, 2005. After reading transcript of investigation, Carrier found Engineer Snowden responsible for violating GCOR 5.4.2B – Restriction Is Not Specified In Writing; and GCOR 6.31 – Maximum Authorized Speed. Upon a finding of responsibility, Engineer Fletcher was assessed Level 4 discipline. Level 4 discipline, combined with Engineer Snowden's current discipline status, UPGRADED discipline assessed to Level 5, or permanent dismissal.

Discipline was timely appealed in accordance with labor agreement. Partisan parties have been unable to resolve this dispute on property, and it comes, now, before this Board for final and binding adjudication.

During formal investigation, Carrier, through introduction of electronic data, established that Engineer Snowden did not proceed for a distance of four miles beyond yellow flag placed at MP 106.5, at a speed of 10 MPH or less above maximum authorized speed.

Organization argued that Engineer Snowden was the object of retaliation because of an earlier complaint he registered having to do with verbal abuse by a Carrier Officer. Organization offered credible evidence in the form of acknowledged verbal abuse; comments made by Carrier Officer stating that Engineer Snowden had a bull's eye on his back; and a comment by one of the testing officers indicating that had Engineer Snowden passed the failed test, there were other tests awaiting him further down the track.

OPINION OF THE BOARD:

The Board has read the entire record of evidence; evaluated arguments made by both parties; and allowed the record to speak. While the record shows rather clearly that

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Engineer Snowden was in violation of the rules with which he was charged, upon consideration of all credible testimony, facts, and circumstances peculiar to this dispute, we are convinced that permanent dismissal was too harsh a penalty. For that reason, we exercise our prerogative to reduce discipline to Level 4, and time already served.

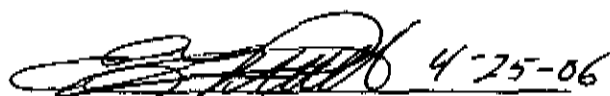
If Carrier has not already done so, it is directed to return Engineer Snowden to duty - without back pay - after he passes the physical, drug and alcohol, and other tests, as appropriate.

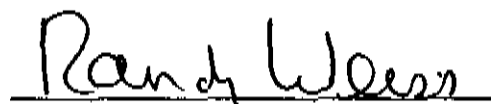
Carrier is, further, directed to implement this award within 30 days of execution by majority Board.

AWARD:

Claim is partially sustained and partially denied per findings above.


J. E. (Jim) Nash - Arbitrator, Chairman and Neutral Member

 4-25-06
Employee Member, Mr. Lee Pruitt
Brotherhood of Locomotive Engineers &
Trainmen


Carrier Member, Mr. Randy Weiss
Union Pacific Railroad Company
April 25, 2006