

The Board has carefully reviewed the entire on-property record in this matter. We find no procedural error which might preclude us from affording this appeal a full review on the merits. This case is sound from the standpoint of due process, we thus rule. With regard to the merits, we find that, based on the testimony and evidence obtained at the fair and impartial investigation, the Carrier's determination as to the Claimant's responsibility for the incident was supported by substantial evidence.

From our careful review of the record, the Board finds that the Carrier's credibility determinations as regards the testimony and demeanor of the witnesses who testified should not be disturbed. In fact, from his repeated testimony at investigation, it is clear that the Claimant accepted responsibility for the crew's failures on the incident date (Tr. pp. 103, 104 and Exhibit C).

Based on the foregoing, the Board reiterates that the Carrier's findings as to the Claimant's responsibility for the incident were based on substantial evidence of record and must not be altered. Consequently, the Carrier was justified in assessing serious discipline for the Claimant's rule violations pursuant to the Carrier's Individual Development and Personal Accountability Policy (IDPAP).

However, in this case, the Board finds that the discipline of dismissal was too harsh. Indeed, as the Organization pointed out, shortly before the incident, the Claimant and conductor were approached at the crossing by a gentleman who requested that the crew clear the crossing because his wife was ill and in need of medical attention. We find that the distraction caused by the unexpected interruption mitigates the Claimant's violation of the rules with which charged given the complete factual record before us. The record also establishes that the decisive actions of the N34416 crew, of which, again, the Claimant was the engineer, and the vigilance of F76624 crew, as well, averted injuries and damages to Carrier property or equipment, the Claimant's rules failures notwithstanding.

Therefore, given the above mitigating factors, the Board holds that the discipline of dismissal shall be reduced to a six-month actual suspension, commencing on July 11, 2006 and ending on January 11, 2007, and his disciplinary record shall be amended, accordingly. The Claimant's return to service will be contingent upon his successful completion of the customary return-to-duty examinations and requirements, we also rule. The Board further holds that, once the Claimant is successfully reinstated, he shall be paid for time lost beyond the six-month suspension imposed herein. The Claimant's failure to satisfy the Carrier's return-to-work requirements shall result in the reinstatement of the Carrier's initial dismissal action, we also rule.

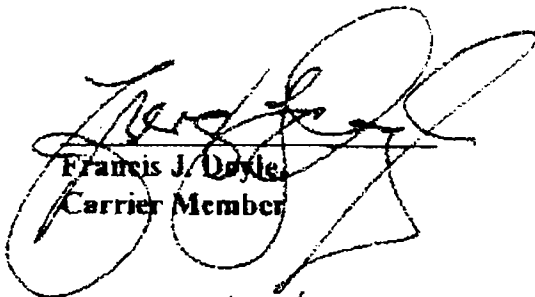
The Claimant is reminded that his responsibility for complying with the Carrier's Operating, Safety and Conduct Rules is of paramount importance and that his failure to do so in the future may result in more serious disciplinary consequences. As a relatively new employee, the Claimant is encouraged to ensure his compliance with the Carrier's safe work practices and, when in doubt of the proper course of action to be followed, to seek clarification or assistance from his more experienced crew members and supervisors.

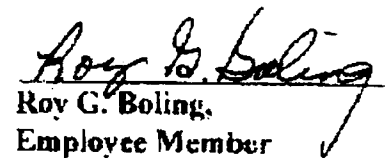
AWARD:

Claim sustained in accordance with the Findings. The Carrier is ordered to comply with this Award within 30 days of its date.

Lynette A. Ross

Lynette A. Ross, Neutral Member


Francis J. Doyle
Carrier Member


Roy G. Boling,
Employee Member

Dated: 3/12/07