

PUBLIC LAW BOARD NO. 4878

AWARD NO. 9
NMB CASE NO. 9
UNION CASE NO. 817 BLE
COMPANY CASE NO. 111-296-1 S.Div.

PARTIES TO THE DISPUTE:

Illinois Central Railroad

- and -

Brotherhood of Locomotive Engineers

STATEMENT OF CLAIM:

Claim of Southern Division Engineer K.L. Hodges for the removal of 60 days' suspension for the alleged violation of Operating Department Rules A, B, E, 111(E), 701 and 715 at approximately 8:35pm on March 4, 1989 near Mile Post 753 at Crystal Springs, MS.

OPINION OF BOARD:

On March 4, 1989, Claimant was working as Engineer on a loaded grain train, between Gwin and McCob, Mississippi. Southbound near Ragan, MS, the dispatcher radioed the crew to inspect the 35th car on the train for a hot box. Claimant stopped his train and, as Brakeman S. B. Martin subsequently testified, he personally inspected the car and reported everything okay to Claimant as follows:

Q: F. A. Elkins, Jr. Asst. Supt.

A: S. B. Martin, Brakeman

Q: What did you do once you got off the locomotive?

A: Let him pull on over the bridge and when he got stopped, I walked back and I inspected the 30th to 35th car, the 35th car had new brake shoes on it and it was a little warm, like brakes sticking on it. I inspected the car on both sides and it didn't feel out of the ordinary, as far as the temperature. I could put my hand anywhere on it without it feeling warm, so just as a precaution I cut the air out on it and bled the car off. Then I inspected five cars behind it and came back up and shoved back and I got on the engine.

2

Q:Did you relay this information to the conductor and engineer while you were on the ground?

A: Yes, sir.

Q: Then did they back up to pick you up?

A: Yes, sir.

Q: Did Mr. Ramirez then report this to the dispatcher on the radio?

A: Yes, sir.

After picking up the Brakeman, Claimant continued southbound past Jackson, MS. Near Cynthia, MS, an empty grain train eyeballed Claimant's train and advised that his train looked good to high-ball. About 35 miles later, just north of Crystal Springs, as the train was approaching a steep grade, the dispatcher notified the crew they had a car on the ground. Subsequent inspection showed the derailed car was number 35.

Carrier summoned the entire crew, including Claimant, to a formal investigation into causes and responsibility for the derailment. Carrier found Claimant guilty of violating a number of rules, especially Rule 111(E), and assessed a sixty (60) day suspension without pay:

RULE 111(E)

When a hot box is detected, the train must be stopped immediately and the hot box inspected. The train must not be moved to the next station until it has been determined that it is safe to do so. When a car with a hot box is set out, the fire must be extinguished, the box lid closed, and the car inspected thoroughly to make sure that neither the floor nor other parts of the car are on fire.

There is no room for doubt on this record that Carrier was arbitrary, unreasonable and capricious to discipline Claimant in this case. Carrier cites a number of precedent awards which hold that contributory negligence by others does not obviate or

justify proven negligence by a charged employee. Those cases are readily distinguishable from the present matter, however, because here there is not one iota of evidence to show Claimant was at fault. He stopped his train immediately upon learning of the hot box report, waited for the Brakeman to complete his inspection, and justifiably relied upon the Brakeman's assurances that everything was alright. Whether the Brakemen behaved correctly is not for us to decide; but we do hold that Carrier's attempt to discipline this Claimant on the basis of "guilt by association" was improper and must be set aside.

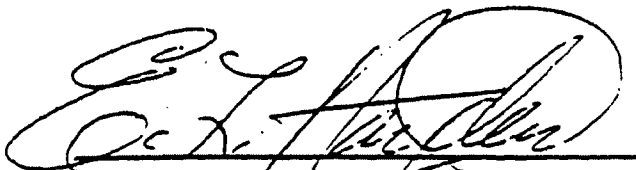
AWARD

- 1) Claim sustained
- 2) Carrier shall implement this decision within thirty (30) days' of its execution by a majority of the Board



Dana Edward Eischen, Chairman

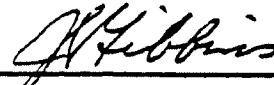
Dated at Ithaca, New York on 8-7-91



Union Member

Dated at Memphis, TN
on 8-12-91

I DISSSENT



Company Member

Dated at Chicago IL
on 8-15-91