

PUBLIC LAW BOARD NO. 4081

PARTIES	CHICAGO AND NORTH WESTERN)	
	TRANSPORTATION COMPANY)	
)	AWARD NO. 40
TO	AND)	
)	CASE NO. 42
	BROTHERHOOD OF LOCOMOTIVE)	
DISPUTE	ENGINEERS)	

STATEMENT OF CLAIM:

The Brotherhood of Locomotive Engineers - CNW General Committee requests this Board consider and authorize Engineer E. Baker all time lost, including the time spent at the investigation and removal of all entries in regard to the discipline imposed from his Service Record.

Engineer E. Baker was investigated on March 9, 1993 on the following charge:

'Your responsibility in connection with freeze damage to Locomotive CNWA 4708 at North Avenue Yard while employed as Engineer on YPR56 on duty 0630, February 23, 1993.'

Subsequent to the investigation, Engineer Baker was assessed five days suspension under Discipline Notice No. 2311 dated March 15, 1993. Claim is premised on BLE/CNW Schedule Rule 41. **Copies attached as Employee's Exhibit A.**

HISTORY OF DISPUTE:

On February 23, 1993 Claimant worked an assignment as an Engineer in the Carrier's North Avenue Yard in Chicago, Illinois. When Claimant's assignment ended at

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approximately 3:30 p.m. he set Engine 4708 which he had used on his assignment on the lead track next to the yard office. The following morning at approximately 6:30 a.m. another Engineer reported for a yard assignment and was to use Engine 4708. That Engineer found the unit not on the lead track but on the oil track. Yard Job No. 68 had moved it to that track from the lead. The engine was not running, and a green liquid was leaking from it. The Engineer's attempt to start the engine was unsuccessful. Subsequent inspection by the Mechanic in Charge (MIC) revealed freeze damage to the water pump, air compressor, oil cooler and manifold piping.

By letter dated February 25, 1993 the Carrier notified Claimant to appear for investigation in connection with his responsibility for freeze damage to the Engine 4708. The investigation was held on March 9, 1993. On March 15, 1993 the Carrier notified Claimant that as a result of the investigation he had been found responsible for the freeze damage and was assessed five days suspension.

The Organization grieved the discipline. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act,

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as amended, 45 U.S.C. §§151, et seq. The Board also finds it has jurisdiction to decide the dispute in this case. The parties waived hearing.

The Carrier maintains that Claimant violated Operating Rule 771 containing instructions for engine tie up in cold weather. The rule provides in pertinent part that the engine should be left running and that the engine monitor should be set with the radio turned to channel 23-23 so that in the event the engine shuts down an alarm will be sounded which will alert personnel monitoring the engine. The rule also provides that the engine monitor unit shall be tested to assure that it is in good working order before the Engineer leaves the unit. The Carrier emphasizes that when the unit was discovered dead on the morning of February 24, 1993 the switches necessary to keep the engine running as well as to operate the engine monitor unit were in the off position. Additionally, the radio was set to channel 71-71 which is the channel for normal yard operations. Accordingly, urges the Carrier, Claimant failed to comply with the rule, and the five-day suspension assessed him was commensurate with his offense.

The Organization raises a number of defenses to the discipline in this case, one of which is that the Carrier has failed to prove Claimant's guilt with substantial evidence. We must agree.

While Claimant tied up Engine 4708 at approximately 3:30 p.m. on February 23, 1993, he was not the last person to handle the engine prior to when it was discovered dead at 6:30 a.m. the following morning. Claimant testified that the Foreman of Yard Job No. 68, who is not an engineer, told Claimant that he had moved the unit from the lead

track to the oil track. Further testimony from Claimant was to the effect that Claimant had complied with the requirements of Rule 771. Additionally, Claimant testified that the engine was running when he left it at approximately 3:30 p.m. on February 23, and that testimony was corroborated to a certain extent by the General Yardmaster.

Yet, with the evidentiary record in such a state the Carrier failed to call the Foreman of Yard Job No. 68 to question him as to his handling of Engine No. 4708 and the position of the critical switches when he left the unit on the oil track. Rather, the Carrier appears to have been content to rely upon a statements by Claimant that he could not remember whether he left the switches in the on position and the radio set to the proper channel or had tested the engine monitor. It must be borne in mind that Claimant made those statements after having been wakened only two hours into a sleeping period and after having worked many hours during the previous days with short rest. The Carrier inferred from the statements that Claimant was guilty.

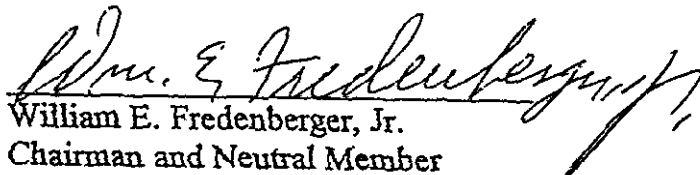
Under these circumstances we believe the Carrier erred by failing to call the Foreman of Job No. 68. In so doing it materially diminished the quality of the evidentiary record. Specifically, we cannot find that the record before us substantiates Claimant's guilt as found by the Carrier. It follows that the Carrier's finding of guilt and the discipline based thereon must be set aside.


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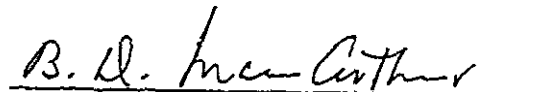
AWARD

Claim sustained.

The Carrier will make this award effective within thirty days of the date hereof.


William E. Fredenberger, Jr.
Chairman and Neutral Member


C. R. Wise
Carrier Member


R. D. MacArthur
Employee Member

DATED:

