

PUBLIC LAW BOARD NO. 4767

AWARD NO. 18

CSX TRANSPORTATION INC.

VS.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Request was made to remove letter of discipline assessing thirty (30) days suspension also removing the copy of transcript of investigation from personal record of engineer R. E. Akers, for alleged violation of Operating Rules 46, 561, 650, Train Handling rules 1.1.2 and 1.2.1.

Request was made for payment of the thirty days suspension by letter dated March 6, 1991.

STATEMENT OF FACTS: On December 12, 1990, R. E. Akers

(hereinafter claimant) a demoted engineer, was working as a qualified helper on Relief Job HR02 (Locomotive Servicing Facility) at the carrier's Moncrief Yard, which is located in Jacksonville, Florida. During such assignment (approximately 1700 hours) claimant and Hostler J. K. Maddox,

an experienced switchman/conductor, were moving a two engine consist through a wye when a derailment occurred. At the time of such derailment claimant was not operating the locomotive but was situated on the ground and charged with protection of the movement. As a result of such derailment both employees (Akers/Maddox) were noticed to appear for an investigation to determine each employee's responsibility, if any, in connection with such incident.

Following the investigation Division Manager W. J. Turner, Jr., reviewed the evidence and issued his decision, stating in pertinent part as follows:

* * * *

"This has reference to formal investigation held in the conference room at Moncrief Yard, Jacksonville, Florida, on January 31, 1991, in connection with an incident that occurred at approximately 1705 hrs, December 2, 1990, while you were working as Hostler on assignment HR02, which resulted in a derailment to an engine in the Locomotive Service Facility of Jacksonville, Fl.

Testimony presented in the transcript of the formal investigation reveals that you failed to comply with CSX Transportation Operating Rules 46, 561, 650, CSX Train Handling Rules 1.1.2, and 1.2.1. It was clearly proven in the transcript that the locomotives you were responsible for were traveling more than twice the maximum authorized speed prior to the incident. It was also proven that you failed to perform a proper brake test prior to moving the locomotives; and you failed to insure that the brakes were in operative condition prior to taking charge of the locomotives.

For your proven violation of CSX Transportation Operating and Train Handling Rules, you are assessed discipline of thirty (30) days' actual suspension without pay."

* * * *

Such decision was unsuccessfully challenged on both procedural and substantive grounds, and thereafter properly processed to this Board for final resolution.

FINDINGS: Under the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement and has jurisdiction of the parties and subject matter.

We find the carrier's disciplinary decision to be insupportable. The carrier's notice of investigation contains no date of the alleged violation (material procedural error) and the substantive evidence conclusively proves that it was Hostler Maddox which had *primary* control of the movement and therefore must bear the *primary* responsibility.

AWARD: Claim sustained. Carrier is directed to implement this award
within 30 days of the effective date hereof.

Don B. Hays
DON B. HAYS, Neutral Member

A. B. Montgomery
A. B. MONTGOMERY, ~~Carrier~~ Member

E. L. Hayden
E. L. HAYDEN, Organization Member

11/8/76
DATE