

PUBLIC LAW BOARD NO. 5392

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS
TO)
DISPUTE) CSX TRANSPORTATION, INC. (FORMER SEABOARD COAST LINE
RAILROAD COMPANY)

STATEMENT OF CLAIM

I request that Mr. Porter, ID 167006, be paid for time lost as a result of being taken out of service on September 27, 1990 for thirty (30) days as a result of the investigation at Andrews, SC on October 5, 1990 in the form of discipline for derailment at Andrews on 9/27/90. Also 26 cents a mile standard auto allowance for the 140 miles he made to Andrews from his home and back (70 miles round trip), in two trips; one to get his letter of discipline from the trainmaster and one for the investigation. Mr. Porter stood to work a six day road switcher which totals 26 days at \$131.41. Total claim is for \$3,453.06 dollars.

OPINION OF BOARD

As a result of charges dated September 28, 1990, investigation held October 5, 1990, and by letter dated October 27, 1990, Claimant was assessed a 30 day suspension resulting from a derailment at Andrews Yard on September 27, 1990.

Claimant was not mailed the notice of investigation by certified mail. Instead, Claimant was called by Trainmaster B. Sarvis on October 1,

1990 and was told (or advised) to pick up a letter. Claimant drove to Andrews Yard and picked up the letter, which turned out to be the charges.¹

We are unable to address the merits of the discipline in this case. The notification of charges was procedurally defective.

Article 31, Section (B)(1)(a) of the November 18, 1981 Memorandum Agreement states:

An employee directed to attend a formal hearing to determine the employee's responsibility, if any, in connection with an occurrence or incident shall be notified in writing by certified mail, return receipt requested, to the last known address within a reasonable period of time but not to exceed ten (10) days from the date of occurrence, or where the occurrence is of a nature not immediately known to the employee's supervisor(s), from the time they first have knowledge thereof. The notice shall contain a clear and specific statement of the date, time, place and nature of the occurrence or incident that is to be the subject of the hearing. The notice shall be sent in duplicate in order that the employee may transmit a copy to the employee's representative, if the employee so desires.

NOTE: This rule does not preclude de-

¹ At the investigation, Claimant refused to acknowledge that he was properly served. Tr. 2

livery of the notice at a reasonable time by a carrier representative. Such delivery at the employee's home shall be made only when other means of delivery are not practicable.

Thus, the employee can be notified of charges by certified mail. Claimant was not so notified. The employee can also be notified of charges by delivery of the charges by a Carrier representative at a reasonable time. With respect to the Carrier's delivery of the charges, there is nothing in the rule or in the facts presented by this case that allows the Carrier, as here, to cause the employee to drive back to the property and pick up the letter. That action was unreasonable.

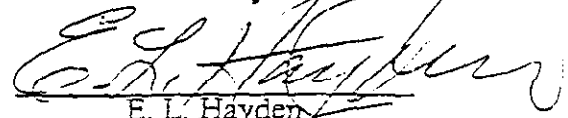
With respect to the remedy, because the notification of the charges was procedurally defective, the 30 day suspension shall be rescinded. Claimant shall be made whole for all lost wages and entitlements. The other relief sought by Claimant is not supported by the Agreement and will not be allowed.

AWARD

Claim sustained as set forth in the opinion.


Edwin H. Benn
Neutral Member


A. B. Montgomery
Carrier Member


E. L. Hayden
Organization Member

Jacksonville, Florida

Dated: JAW 18, 1994