

PUBLIC LAW BOARD NO. 5959

Case No. 31
Award No. 31

Brotherhood of Locomotive Engineers)	
)	
vs.)	PARTIES TO DISPUTE
)	
CSX Transportation, Inc.)	

STATEMENT OF CLAIM

Claim on behalf of Engineer J. M. Towner, Jr., ID#039860, for reimbursement of all earnings and benefits lost, including all earnings lost account of attending investigation, recovery of all vacation pay and rights, and service record cleared of all charges resulting from investigation held on November 6, 1990. Discipline assessed - thirty (30) days actual suspension.

FINDINGS

This Board finds the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction over the dispute involved herein. The parties to said dispute were given due and proper notice of hearing thereon.

On October 24, 1996, Claimant was notified to attend an investigation on October 29 to answer to the following charge:

You are charged with responsibility in connection with conduct unbecoming of an employee with Conductor Curry during your tours of duty on October 21 and October 22 while on the lead locomotive of Trains R-317 and R-316.

After a postponement the investigation was held on November 6, 1990. As a result Claimant was assessed a 30-day suspension for:

It has been found that you were at fault for conduct unbecoming of an employee during your tours of duty on October 21 and October 22, 1990 while on the lead locomotive of Trains R-317 and R-316, in violation of CSXT Operating Rules 501, 502, and 560 and Safety Rule 1 and the discipline administered is 30 DAYS ACTUAL SUSPENSION.

During the investigation the Organization objected to the wording of notice of investigation. On page 4 of the transcript the following appears:

STATEMENT BY REPRESENTATIVE TREADWAY

In regard to the charge letter on October 24, 1990

to Mr. Towner, we would like to enter in the record that we do not feel it is proper notice due to the fact that the charge is not specific enough to prepare a proper defense.

After the assessment of discipline, the Organization appealed the case. Again one of the reasons for the appeal was the improper notice in that there was no mention of safety rule violations in the charging notice.

The transcript of the investigation is essentially a review of all the events that occurred on the trip of R-317 beginning on October 21, 1990. It reveals the Claimant and the conductor were engaged in a childlike argument over how wide the window on the conductor's side of the locomotive should be left open. There was no profanity or physical contact as a result of the spat.

The transcript also tells of the engineer uncoupling the locomotives from the rest of the train while it was stalled on a bridge, and how the Claimant recoupled up to the train while it was still on the bridge. While the rules the Claimant was found to have violated were read into the transcript, the record is void of evidence how the rules were violated.

First, the Organization's position on the notice and discipline letter is well taken. Numerous tribunals have held you cannot discipline an employee for something not in the charge letter. Also, what is "conduct unbecoming an employee." If the Carrier felt the stupid argument carried on between the Claimant and the conductor was worthy of an investigation, both should have been charged with entering into an altercation. Because of the improper notice and lack of proof the Carrier failed to show the Claimant violated the rules.

AWARD

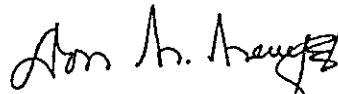
Claim sustained. Carrier is ordered to comply with the Award within 30 days of its date.



R. G. Richter, Chairman



L. F. Kell, Jr.
Carrier Member



D. M. Menefee
Employee Member

Date: 7-9-97