

PUBLIC LAW BOARD NO. 5959

Case No. 33

Award No. 33

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

STATEMENT OF CLAIM

Claim on behalf of Engineer J. M. Towner, ID #039860, for reimbursement of all earnings and benefits lost, including all earnings lost account of attending investigation, and service record cleared of all charges resulting from investigation held on January 3, 1992. Discipline assessed - ten (10) days overhead 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.

Claimant was assessed a 10 day overhead suspension as a result of an investigation held on January 3, 1992. The Carrier found the Claimant to be at fault for a personal injury sustained on December 28, 1991.

The Organization has appealed this case on the basis the Claimant was not properly notified of the investigation as required by Rule 26 of the Schedule Agreement. On page 1 of the transcript, the Claimant was asked:

STATEMENT OF CHARGED EMPLOYEE ENGINEER TOWNER
QUESTIONS BY INVESTIGATING OFFICER ROBEY

Q 1 Mr. Towner, you are charged with responsibility in connection with personal injury to yourself at about 0530 hours on Saturday, December 28, 1991, near 29th Street in the Low Yard at Parkersburg, West Virginia. Were you properly notified of these charges?

A 1 I was notified by telephone.

On page 2, the Organization objected as follows:

STATEMENT BY REPRESENTATIVE KOSCOE

At this time, I would like to object due to the fact that Rule 26 of the Agreement, the working Agreement, states that the man will be notified by letter of the charge, of the precise charge, and this is was not done. It says in there, also, if at all possible, and it would have been possible to give this man notice so that we could prepare for defense in the case.


The position of the Organization cannot be ignored. For this Board to rule that an employee can be notified of an investigation by telephone, would be tantamount to changing Rule 26. This Board has no authority to do so.

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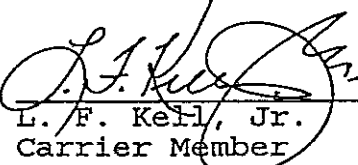
The Claimant was not properly charged, ergo, there is no need to discuss the merits for the discipline.

AWARD

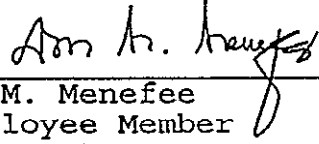
Claim sustained. Carrier is ordered to comply with this award within 30 days of its date.



R. G. Richter, Chairman



L. F. Kell, Jr.
Carrier Member



D. M. Menefee
Employee Member

Date: 7-8-98