

PUBLIC LAW BOARD NO. 5959

Case No. 4
Award No. 4

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

STATEMENT OF CLAIM

Claim on behalf of Engineer R. James, ID #010235, for all lost earnings incurred while serving a 45 day suspension commencing January 22, 1993, including all earnings lost account attending investigation on February 1, 1993, and service record cleared of all unfavorable entries from service record relative to the incident that occurred on January 21, 1993.

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 suspended for 45 days by the Carrier effective January 22, 1993 as a result of a formal investigation held on February 1, 1993. Claimant was found to have violated Operating Rule 184.

A review of the record reveals that the Claimant operated train R37121 without proper clearance. Upon arrival to work at Baltimore the crew members for R37121 picked up train orders from atop the printer. After comparing each others copies the crew proceeded on its trip. Upon arriving at Hancock, Maryland the crew encountered advance warning signs placed by Maintenance of Way Employees working ahead. The crew checked its train orders and found nothing pertaining to such work. After getting permission from the work crew foreman the train proceeded. A short time later the crew realized it had the wrong orders. Apparently, the crew had picked up the orders for the train of the 20th, not the 21st.

Claimant was removed from service on January 22, 1993 pending the formal investigation.

The Organization takes the position the Claimant was improperly removed from service pending the investigation. It further argues the Carrier's procedures were the reason for the mistake in orders as evidenced by charges made shortly after this incident. Finally, after discovering the error, Claimant operated the train in a safe manner.

As to the claim on its merits, it is not disputed the crew operated its train without proper orders. Rule 184 reads:

184. The conductor and engineer must:

1. Obtain a legible copy of a train bulletin with a release form at on duty locations.
2. Ascertain (with each other, if feasible) that the information common to both documents correspond, and
3. Confirm their understanding of the requirements (with each other, if feasible).

Other crew members must read and understand the requirements of the train bulletin.

If their release form is not available when reported for duty, the conductor or engineer must promptly contact the train dispatcher.

If the crew had thoroughly read the orders it would have found the wrong date. The fact that the train was operated properly after the error was found is not mitigating.

As to pulling the Claimant out of service pending the investigation, the Organization's position is well taken. The Organization has made this argument from the onset of this case. The Carrier has yet to respond to the Organization's position. Regardless, there was no reason to pull the Claimant out of service pending the investigation. The record is void of evidence that Claimant had committed an offense serious enough to remove him from service prematurely. Nor is there evidence Claimant was a danger to himself or fellow employees.

Claimant violated the rules and the discipline will remain on his record. However, Carrier improperly removed the Claimant from service pending the investigation. Accordingly, the Claimant is to be paid for all time lost from January 22, 1993 until February 22, 1993, the date the discipline was assessed.

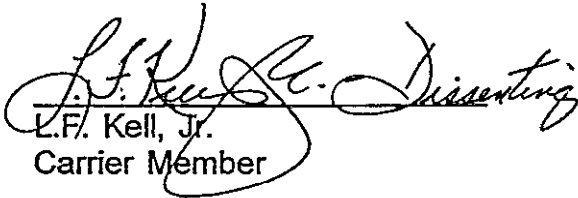
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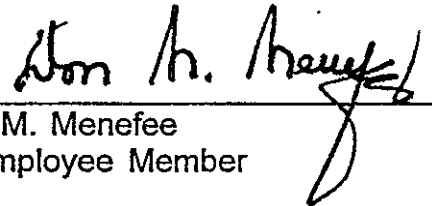
Claim sustained in accordance with the findings. Carrier is ordered to comply with the Award within 30 days of its date.



R.G. Richter, Chairman



L.F. Kell, Jr.
Carrier Member



D.M. Menefee
Employee Member

Dated 5-23-97