

## PUBLIC LAW BOARD NO. 5959

Case No. 44

Award No. 44

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

STATEMENT OF CLAIM

Claim on behalf of Mr. J.M. Correa, work ID #401628, for immediate reinstatement with full seniority rights unimpaired, service record cleared of all charges, reimbursement of all lost earnings, including earnings lost for attending investigation and recovery of all vacation pay lost during dismissal as a result of investigation DET 97-0007 held on March 21 and 22, 1997. Discipline assessed - dismissal.

## 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 dismissed from the service of the Carrier on April 18, 1997 as the result of an investigation held on March 21 and 22, 1997. In addition, the Claimant's engineer certification was suspended.

The facts brought out at the investigation reveal that Claimant was the engineer on job Y20412 at Wyoming Yard, Grand Rapids, Michigan, on March 12, 1997. Around 7:30 p.m. Claimant's train collided with a locomotive at the west end of track W-35. The accident resulted in approximately \$40,000 in damage.

The Organization argues that Claimant was improperly removed from service after the accident. It argues the incident was not a grave offense. It also argues the Carrier failed to meet its burden.

Carrier takes the position that the Claimant received a fair and impartial hearing and the discipline assessed was proper. Carrier avers Claimant violated Rule 46. On page 193 of the transcript of the hearing the following exchange occurred:

Edwards: "Trains may use tracks other than main tracks, signal tracks or siding without permission. (See Rule 46)." Engineer Correa, is Rule 46 in effect for train movements in west 35 track?

Correa: Yes.


Edwards: "Trains using other than main or signal tracks must move at a speed that will permit stopping within one half the range of vision short of a train, a car, and obstruction, a derail or improperly switched on track equipment or a stop signal not exceeding 25 mph." Did you read this rule along with me?


Claimant was afforded a fair and impartial hearing which was held in a timely manner. However, the Carrier was incorrect for removing the Claimant from service pending the investigation.

Carrier has met its burden in proving Claimant violated Rule 46. Claimant has 27 years of service with the Carrier, 17 as an engineer. Accordingly, the discipline assessed is unduly harsh. Claimant will be reinstated with seniority unimpaired without pay for time lost except for the period March 12, 1997 to April 18, 1997. Claimant must pass the Carrier's required examinations before reinstatement.

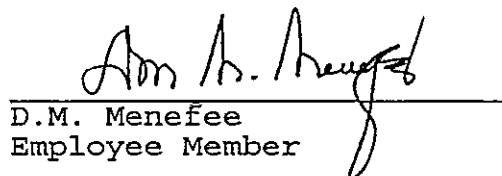
AWARD

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

  
R. G. Richter, Chairman

  
L.F. Kell, Jr.  
Carrier Member

*I dissent*

  
D.M. Menefee  
Employee Member

Dated: 10/5/98