

PUBLIC LAW BOARD NO. 5959

Case No. 46
Award No. 46

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

STATEMENT OF CLAIM

Claim on behalf of Engineer J. McLamb, Jr., ID 010253,
for reimbursement of all earnings and benefits lost
including all earnings lost on account of attending an
investigation on May 8, 1997. 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.

Claimant was suspended for 30 days as a result of an investigation held on May 8, 1997.

The facts reveal that on May 1, 1997, while switching at Bayview Yard, Baltimore, Maryland, Claimant's assignment was involved in a derailment causing hazardous materials to be released from a tank car.

The Organization argues that Claimant was denied a fair and impartial hearing because not all witnesses were called. It also argues Claimant was improperly removed from service pending the investigation.

While the organization claims witnesses were not called, it fails to show what information these alleged witnesses could provide which would change the facts of the derailment.

The testimony at the investigations reveals the Claimant and crew were slowing to make a pick-up when it hit the car they were to pick up, causing the tank car to rupture. The testimony revealed that the speed of the locomotive at the time of impact was 6 mph. The facts also reveal the Claimant was given the distance

of six car lengths and at four cars. The next radio transmission was to stop after the derailment occurred. The locomotive tape shows no reduction in speed until the collision. A test of the radio found no malfunction. Claimant was found to have violated 103A which reads:

2. Make couplings at a speed of not more than 4 miles per hour.

and Rule 414 which reads:

When radios are used in connection with switching, backing or pushing a train or cars:

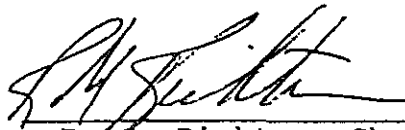
1. The employee directing the movement must:
 - (a) Keep in constant radio contact with; and
 - (b) Give clear and complete instructions to the employee receiving the instructions.
2. These instructions must specify:
 - (a) The distance of the movement to be made in car lengths, 50 foot lengths;
 - (b) The position of any switches involved with the move; and
 - (c) That the employee directing the movement is in the clear.
3. Unless additional instructions are received, the movement must be stopped in one-half the specified distance.
4. The movement must be stopped if there is any doubt;
 - (a) The meaning of the instructions, or
 - (b) For whom such instructions are intended.
5. The movement will not resume until:
 - (a) An additional job briefing is conducted, and
 - (b) All concerned understand the move to be made.

The Carrier has shown that the Claimant violated its rules. The hearing was fair and impartial. However, the Carrier improperly withheld the Claimant from service pending the investigation.

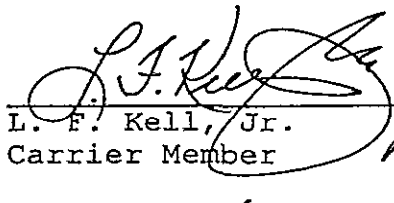
The discipline assessed will remain on the Claimant's record, but the Carrier must reimburse the Claimant for all time lost from May 2, 1997 until the date of the letter of discipline, which was not made a part of the record before this Board.

AWARD

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

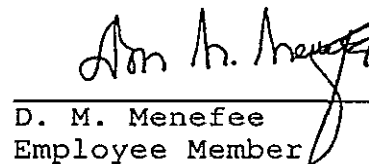


R. G. Richter, Chairman
Neutral Member



L. F. Kell, Jr.
Carrier Member

Dissenting



D. M. Menefee
Employee Member

Dated 7/8/98