PUBLIC LAW BOARD NO. 6113

Case No. 1 Award No. 1

PARTIES Brotherhood of Locomotive Engineers

to and

DISPUTE: Paducah & Louisville Railway, Inc.

STATEMENT OF CLAIM:

Claim of Paducah & Louisville Railway Engineer G. L. Scott for reinstatement to service with seniority rights unimpaired - all notations of discipline expunged from his personal work record and compensation for all time lost pertaining to the alleged violation of P&L Operating Rules 101(b), 101(d), 101(e), 514 and Restricted Speed in connection with the derailment of train Extra CSXT 6078 North at East Diamond, KY at approximately 3:40 p.m. on Thursday, July 11, 1996.

FINDINGS: By letter, dated July 17, 1996, the Claimant was directed to attend an investigation to develop the facts and to determine his responsibility, if any, in connection with the derailment of his train at East Diamond, Kentucky on Thursday, July 11, 1996.

Following the completion of the investigation, the Claimant was notified by letter, dated August 27, 1996, that he was guilty of the charge and he was dismissed from the service. The Carrier concluded that the derailment was caused by harmonic action when the train had a recorded speed of 16 m.p.h. in a speed restricted zone of 10 m.p.h. The Claimant's certification as a Locomotive Engineer also was revoked as provided in 49 C.F.R. Part 240.307.

The Organization asserts that the Claimant was deprived of a fair and impartial hearing. Without prejudice to that position, it also contends that the facts do not support the finding that the Claimant was guilty of the charge.

Following a careful review of the evidence of record, the Board finds that the claim must be sustained because the Claimant did not receive a fair and impartial trial. The Board would be remiss in not observing the Carrier's strong advocacy at the Board's proceedings. However, its arguments at that time cannot overcome the fatal errors of the Hearing Officer during the hearing held on August 12, 1996.

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In view of evidence showing how poorly this investigation was handled, a few words are required with respect to the role of the Carrier in the disciplinary process. The course of the disciplinary proceeding is under the control and direction of the Carrier. The language of the Parties' Agreement, when it addresses matters related to the Employer/Employee relationship, makes it clear that the notion of fairness is fundamental to that relationship. Indeed, Investigative Rule 31, which in part provides that an employee "shall not be discharged, suspended or otherwise disciplined without just cause and without a fair and impartial hearing," is a provision that advances that basic principle. In effect, it is a quarantee that the Carrier will deal with its employees in an impartial fashion in accordance with the commonly accepted standards of fairness. It is not permitted to cull or select evidence or facts for presentation which only tend to demonstrate or show fault of the person under investigation.

The most glaring impropriety with respect to the fairness of the hearing was the Hearing Officer's denial of the Organization's request to have Road Foreman Robert Buchanan ("Buchanan") appear as a witnessat the investigation to testify. His judgment that it is not "the Company's position to provide witnesses" is just plain wrong. inconsistent with the Carrier's lead role in the investigative process. Certainly, the Organization cannot "willy nilly" request witnesses or go on a fishing expedition that has no reasonable expectation for a constructive contribution to the process. Moreover, it has an obligation, if challenged, to explain what it believes the witness can contribute to the orderly development of facts relevant to the incident under investigation. The Organization clearly did so in this case, not once, but on a number of occasions. For example, the testimony of the Claimant as well as the Supervisor of Locomotive Engineers provided a reasonable showing that Buchanan may have had significant information as to the cause of the derailment. When the Carrier refuses to call a witness, after the Organization had provided its reason for the witness, the burden shifts to the Carrier to provide a reasonable explanation for denying the request.

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In summary, without belaboring the point any further, this Board finds that the on-the-property proceedings did not meet the commonly accepted standards of fairness and impartiality. The parties contracted to provide the employee the right to a fair and impartial trial before any disciplinary action could be taken. If that procedural safeguard can be circumvented by the kind of process used here, the Parties" contract would have little substance. For any disciplinary action to have a legitimate foundation, the "fair" and "impartial" trial agreed to in Rule 31 must occur.

AWARD

The claim is sustained. Back pay will be determined by a compilation of the average earnings of the Engineer immediately above and below the Claimant on the Claimant's Seniority Roster.

Carrier Member

Neutral Member

Employee Member