

PUBLIC LAW BOARD NO. 6920

AWARD NO. 10

CASE NO. 10

Carrier File: M0406607

Organization's File: A050306.3

**PARTIES TO
THE DISPUTE:**

Brotherhood of Maintenance
of Way Employees

vs.

Kansas City Southern Railway Company
(former MidSouth Rail Corporation)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

We are hereby submitting an appeal in accordance with Rule 34, of the agreement between the Kansas City Southern Railway Company-MidSouth Rail Corporation ... and its employees represented by the Brotherhood of Maintenance of Way Employees ... concerning the Director Labor and Office Administration, C. L. Wright's decision dated March 17, 2006 to discipline ... employee W. N. Davis, for alleged violation of the Kansas City Southern General Code of Operating Rules 1.1, 1.1.1, 1.1.2, 1.1.3, 1.25, 1.13, and 1.6, and from the Special Instructions of the Kansas City Southern System Timetable Rule 1.6 as revised, as a result of an investigation held March 10, 2006 ..."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was dismissed from service by decision letter dated March 17, 2006 for an alleged late report of injury. According to the record, claimant was involved in a vehicle spin-out and collision with a median guardrail on the morning of February 20, 2006. He did not report any injury or need for medical services when questioned approximately one hour after the incident. Claimant observed a personal day away from work the following day. Nonetheless, claimant sought medical attention on the afternoon of February 22, 2006 without notifying the Carrier. Moreover, claimant did not file a report of injury from the vehicle accident until February 23, 2006. At the time of the

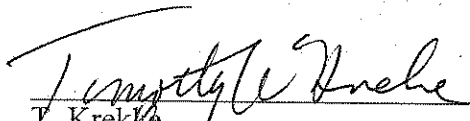
events in question, Claimant had more than 30 years of railroad service.

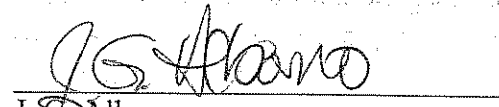
Our review of the record in this matter does not reveal any procedural irregularities of significance. However, the unique mitigating circumstances of this record call for a modification of the discipline. Subject to successfully passing the Carrier's usual requirements for returning to work after extended absence, Carrier is directed to offer Claimant reinstatement to his former employment status with seniority and other rights associated with that status unimpaired but without back pay or other economic benefits attributed to his time out of service.

AWARD:

The Claim is sustained in accordance with the Findings.


Gerald E. Wallin, Chairman
and Neutral Member


T. Krekko,
Organization Member


J. G. Albano,
Carrier Member

Date: 5-8-08