

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD 6920**

Kansas City Southern Railway Company) MidSouth Rail Corporation/South) Rail Corporation))	
and)	Case No. 18
Illinois Central Gulf Federation)	Award No. 18
Brotherhood of Maintenance Way)	
Emploes Division, International)	
Brotherhood of Teamsters)	

STATEMENT OF CLAIM:

1. Carrier violated the current Work Agreement between the Kansas City Southern Railway Company-MidSouth Rail Corporation/South Rail Corporation and its employees represented by the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters when, on September 18, 2009, it dismissed Claimant P. Henry from service.
2. As a consequence of the violation referred to in Part 1 above, Claimant should be immediately returned to service and reimbursed for all wage loss sustained and his record cleared of all charges.

Findings:

Public Law Board 6920, upon the whole record and all the evidence, finds that (1) the parties to this dispute are Carrier and Employees within the meaning of the Railway Labor Act as amended, (2) the Board has jurisdiction over this dispute and (3) the parties to this dispute were accorded due notice of the hearing.

On September 11, 2009 an investigative hearing convened for the following purpose:

...to ascertain the facts and determine [Claimant's] responsibility, if any, in connection with [his] alleged failure to operate [his] Hyrail vehicle in a safe manner near East Brandon, Mile Post 80.5 on the Meridian Subdivision, resulting in a collision with the rear of the Rankin Turn on July 29, 2009 at approximately 1430 hours. At the time of this incident [Claimant was] performing duties as a Machine Operator.

The AVP Engineering reviewed the investigative hearing transcript and dismissed Claimant from service effective September 18, 2009 based on the violations itemized below.

General Code of Operating Rules

- 1.1 (Safety), 1.1.1 (Maintaining a Safe Course), 1.1.2 (Alert and Attentive),
1.3.1 (Rules, Regulations, and Instructions), 1.6 (Conduct), Rule 6.27

(Movement at Restricted Speed), 10.1 (Authority to Enter CTC Limits), 10.3 (Track and Time), 10.3.3 (Joint Track and Time).

Kansas City Southern System Special Instructions

1.6 (Conduct), 10.3.1 (Protection of Limits), 10.3.2 (Protection of Machines, Track Cars or Employees), 10.3.3 (Joint Track and Time).

Kansas City Southern Maintenance of Way and Signal Department On-Track Safety and Roadway Worker Rules

21.0 (Job Briefing), 21.1 (All Employees Must Ensure That They Receive A Job Briefing Before They Foul Any Track), 22.1 (Follow On-Track Safety Rules), 30.2.3 (Movement of On-Track Equipment), 30.5.1 (Operation and Maintenance Instructions), 30.5.3 (Maintaining a Safe Braking Distance), 30.5.4 (Qualified Operators).

Engineering Rule Book

Job Briefing

STAR (Safety Through Awareness and Responsibility)

On November 10, 2009 the Organization filed a claim over Claimant's dismissal. The Organization argues that Claimant has thirteen (13) years of service with no entries in his record. BMW recognizes the Carrier's concern with this infraction; however, instead of using discipline to rehabilitate, correct and guide Claimant in the performance of his duties the Carrier arbitrarily imposed a harsh punishment unrelated to the gravity of Claimant's infraction. The dismissal is unjust and punitive when considering the totality of circumstances.

On January 15, 2010 the Carrier denied the claim. Claimant was grossly negligent in his operation of the Hyrail vehicle by not carefully adhering to the rules. The claim, moreover, does not contest the facts but only the penalty imposed. In this regard, the Carrier routinely issues a dismissal when there is a Rule 1.6 violation. Thus, the dismissal was not arbitrary but consistent with the Carrier's discipline policy.

On August 12, 2010 the parties met in conference without resolution of the claim.

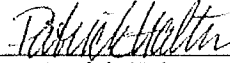
Some of the rules cited by the Carrier as violated by Claimant are repetitive (Rules 1.6 and 10.3 to name a few) and, as such, lend an appearance of charge accumulation as in "piling on" rather than showing multiple, distinct infractions. Nevertheless, this Board recognizes that careless operation of the Hyrail is a grave infraction of rules such as Rule 1.6, Conduct. At the same time, a 13-year employee with a clean record of employment is demonstrative of Claimant's ability over an extended period of time to perform duties in accordance with the rules.

Other than the Carrier's routine application of its discipline policy to issue dismissal whenever there is a Rule 1.6 violation, there is no indication in the record that Claimant's performance deficiencies preclude or foreclose rehabilitation. The Carrier does not offer argument or explanation addressing rehabilitation as an element for consideration when it determines the level of discipline to impose under its policy.

Based on the record established by the parties in this proceeding, dismissal is not proportional for the Claimant's infraction. A suspension without pay for time removed from service is proportional discipline for the infraction with restoration of seniority and benefits for Claimant.

Award:

In lieu of dismissal the Claimant is suspended without pay for time removed from service but with restoration of seniority and benefits.



Patrick Halter

Neutral Member

PLB 6920 Case No. 18



Kevin D. Evanski

Organization Member



Tammy Hurdge Stephenson

Carrier Member

Dated this 14th day
of November, 20 12