

PUBLIC LAW BOARD NO. 1261

Award No. 133
Case No. 184

PARTIES TO DISPUTE:

Southern Railway Company

and

Brotherhood of Locomotive Engineers

STATEMENT OF CLAIM:

Claim of Eastern Division (Greensboro Yard) Engineer E. L. Trexler for restoration to service, seniority unimpaired and, pay for all time lost incident to investigation conducted in office of Superintendent, Greensboro, N.C., November 21, 1977. Article 31, Schedule Agreement.

FINDINGS:

As a result of an altercation between Claimant and a Yard Foreman on Claimant's engine, both men were dismissed from Carrier's service.

On February 28, 1978 Carrier's General Manager offered to reinstate both men on a leniency basis if they withdrew their claims for lost time. The Yard Foreman accepted and was reinstated on March 17, 1978. Claimant refused the offer, and the General Manager withdrew the offer on April 6, 1978.

Claimant, an employe of some 36 years, denied that he was the aggressor and requested the investigation. The evidence indicated that Claimant received blows from the Yard Foreman and asked that he be given medical attention for a possible broken

jaw. There is no evidence that the Yard Foreman was struck by Claimant. There was testimony by a witness that the two men were grabbing and holding each other and "tussling" on the engine.

While it appears from the record that while Claimant may not have been the aggressor, he did actively participate in the altercation. Under the circumstances the Board finds that dismissal was too severe, and that being withheld from service from December 5, 1977 to April 6, 1978 was discipline commensurate with the offense.

Accordingly, Claimant is to be reinstated to service with seniority unimpaired with pay for all time lost beginning April 7, 1978 until restored to service.

AWARD

Claim disposed of per findings.


Neutral Member


Carrier Member


Organization Member

Date: 1/12/79