

PUBLIC LAW BOARD NO. 2354

Award No. 2

Case No. 2902

PARTIES TO DISPUTE: UNITED TRANSPORTATION UNION

AND

BESSEMER AND LAKE ERIE RAILROAD CO.

STATEMENT OF CLAIM:

Appeal of the dismissal of Trainman D. W. Bickel for failure to comply with Rule 34 Book of Rules, while serving as head trainman on Extra 878, resulting in Extra 878 passing a stop signal.

FINDINGS:

On October 21, 1977, Claimant was riding in the cab with the engineer performing services as head brakeman on Extra 878 North. At approximately 5:20 a.m., their train passed signal 120 N., that was displaying a stop indication, and entered the single lane track from track number 200 at Carter. The entire train (approximately 7,000 feet long) went through the stop signal, attained a speed of 35 m.p.h. and was then brought to a stop after the dispatcher radioed the engineer to find out what was going on. The engineer responded by saying that he had apparently dozed off before the train got to the signal at Carter because he did not know what aspect the signal had displayed.

After hearing and investigation, both the engineer and Claimant were dismissed from Carrier service. The engineer was reinstated to service sometime in August or September of 1978; the Grievant remained out of service.

The Board can only conclude, from the evidence of record, that both the engineer and Claimant were asleep in

the cab of their engine when the train entered the main track against a signal displaying a red aspect. This is an appalling and flagrant violation of carrier's safety rules; it was indeed fortunate that there was no damage to either person or property.

Despite this, Carrier saw fit to reinstate the engineer on a leniency basis, and refused to do the same for Claimant. Carrier argued that Claimant was involved in a similar incident once before in his eight year tenure of employment for which Claimant received a 60-day suspension, and that the engineer's record of employment was better.

Because of the intolerable nature of the violation, it may very well have been likely that permanent dismissal of the engineer would have been sustained. But to reinstate the engineer and to deny Claimant the opportunity to return to service is, in the Board's view, disparate discipline. The Board has reviewed the prior records of both Claimant and the engineer and does not find that the engineer's record is any better than that of Claimant. Accordingly, the Board shall reluctantly order that Claimant be reinstated to Carrier service with seniority unimpaired, with pay for time lost commencing from the date of the engineer's reinstatement, less deductions for outside earnings and any unemployment compensation received.

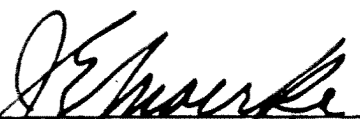
It should be clearly understood by the Claimant herein that he is being given one last chance to perform service for the Carrier.

AWARD

Claim disposed of per findings.



Neutral Member



Carrier Member



Organization Member

Date March 10, 1986