

PUBLIC LAW BOARD NO. 5295

Case No. 25
Award No. 25

Brotherhood of Locomotive Engineers)	
)	
vs..)	PARTIES TO DISPUTE
)	
Union Pacific Railroad Company)	

STATEMENT OF CLAIM

Claim of Engineer J.P. Powell for removal of a 32-day suspension from his record and pay for time lost resulting from discipline assessed for failure to lock a derail in the derailing position while working the M&M Lead on September 24, 1993.

FINDINGS

This Board finds the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction over the dispute involved herein. The parties to said dispute were given due and proper notice of hearing thereon.

Claimant was dismissed from the service of the Carrier on September 29, 1993 as a result of an investigation held on September 28, 1993. Carrier found that Claimant violated General Rules B, 104(A), 101(L) and 607(I). Carrier reinstated Claimant on November 1, 1993.

The record reveals Claimant was working as engineer on job LHK42-24 on September 24, 1993 at Bellmead Yard at Waco, Texas. The crew began switching the M&M plant at approximately 10:00 p.m. After shoving the engine and sixteen cars into the spur, the engineer lined the switch so a coal train could pass on the main line. The crew started to switch the plant when a Carrier Officer arrived on the scene and noticed the derail was not on the spur track leading to the main line. The Carrier officer removed the crew from service at that time. An investigation was held on September 28, 1993.

The Organization argues that Claimant did not receive fair and impartial treatment. It points out that the Notice of Investigation was dated September 27, 1993, the hearing held on September 28, 1993 which was concluded at 6:45 p.m., and the notice of discipline was sent on September 29, 1993 at 9:02 a.m. The Organization further argues that the Carrier prejudged the case when it removed the Claimant from service for allegedly committing a minor offense.


The position of the Organization is well taken. The hearing was conducted at Ft. Worth, Texas by the Carrier's Manager, Train Operations. The letter of dismissal was issued by the Carrier's superintendent at Spring, Texas. The transcript of the investigation, which is 179 pages, was transmitted to the parties on October 11, 1993.

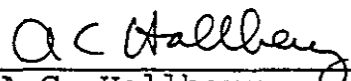
Testimony given at the investigation revealed that for at least 7-1/2 years the crew did not put the derail on the spur track while switching the plant. The immediate removal of the crew from service shows a prejudgment by the Carrier. In this case the alleged violation of the Rules for such an offense does not warrant removal from service.

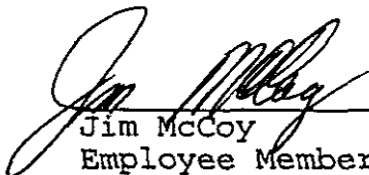
The Claimant was not treated in a fair and impartial manner. There is no way the Superintendent could have reviewed the evidence produced at the hearing prior to issuing the discipline. The fact that the crew was removed from service preceding the investigation supports the Organization position that the Claimant was prejudged.

AWARD

Claim sustained. Carrier is ordered to comply with this Award within 30 days of its date.


R. G. Richter, Chairman


A.C. Hallberg
Carrier Member


Jim McCoy
Employee Member

Dated: June 24, 1999