

PUBLIC LAW BOARD NO. 5959

Case No. 1  
Award No. 1

Brotherhood of Locomotive Engineers)	)	PARTIES TO DISPUTE
vs	)	
CSX Transportation, Inc.	)	

STATEMENT OF CLAIM

Claim on behalf of Engineer I.L. Blanchard, ID# 042002, for reimbursement of all earnings, (including attending investigation), and benefits lost, recovery of all vacation pay, and service record cleared of all charges resulting from investigation held on January 11, 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 suspended for 15 days for allegedly violating THR Rule 3.1.4 paragraph E, in connection with a minor derailment on January 2, 1993. The Rule reads as follows:

When using the independent brake, extreme care must be used to avoid high brake cylinder pressures which could cause excessive buff force or sliding wheel.

The Organization argues the claimant was denied a fair and impartial hearing because he was removed from service on January 3, 1993, and the hearing was not held until January 11, 1993. It argues there was no cause to remove the claimant from service prior to the investigation.

The Organization further argues that no evidence was produced at the hearing to prove the claimant violated the above cited rule.

A review of the transcript of the investigation shows that the claimant received a fair and impartial hearing. However, the Organization position that the claimant was improperly removed from service prior to the investigation is well taken. The derailment caused approximately \$300 worth of damages. This size derailment does not require the crew be tested for drug or alcohol use, and the crew was not tested. There was no evidence that the claimant was impaired or that he was in danger of hurting himself or other employees.

The facts brought out in the investigation revealed the crew was yarding a train consisting of 172 cars with a train length in excess of 10,000 feet. The lead end of the train had to transverse a short double crossover. The claimant was using the independent brake to stop the train. His testimony, which was not refuted, indicates he used 10 pounds of pressure on the brake cylinder. The engine tape shows the train was stopped when the slack ran in on the head end, causing the engine to move forward at 3 mph. When the slack ran in, two cars derailed.

It is the Carrier's position that the claimant used too much air pressure to stop the train, causing excessive buff force which derailed the cars, ergo, the claimant is guilty.

However, nowhere in the investigation was there testimony as to what the proper air pressure should have been. In fact, subsequent to the incident the Carrier issued the following instructions:

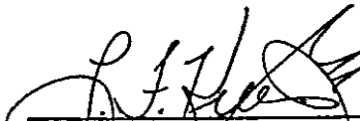
1. When stopping 80 feet or longer cars on other than main track in Barr Yard, the stop must be made using the stretch brake method applying the automatic brake as described in Train Handling Rule 3.2.4 D. The brake cylinder pressure on the locomotive must be actuated off in order to prevent any undesirable slack action from occurring.
2. When yard crews are handling car cuts containing 80 feet or longer cars with air, the above procedure will be used. J.E. Roots - Division Superintendent.

The record not only finds the claimant was improperly removed from service, it also fails to prove the claimant violated THR Rule 3.1.4 Paragraph E. While it may be argued that an experienced engineer should have known to use the automatic brake instead of the independent brake, the issue was never raised.

AWARD

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

  
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R.G. Richter, Chairman

  
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L.F. Kell, Jr.  
Carrier Member  
Dated 3-18-97

  
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D.M. Menefee  
Employee Member