

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

STATEMENT OF CLAIM

Claim on behalf of Engineer S.D. Watson, ID 616642, for immediate reinstatement with full seniority rights unimpaired, service record cleared of all charges, reimbursement of all earnings lost account attending Carrier investigation, Friday, October 13, 1995, at 1000 hours, in the Road Trainmaster's Office, 1837 Chicago Drive, Wyoming, Michigan and then recessed until Wednesday, October 18, 1995.

Claim is also made for the reimbursement of all medical expenses, if any, incurred while being deprived of medical and dental coverage as well as the recovery of all vacation pay and rights lost during claimant's dismissal from service. (Date of incident: September 11, 1995)

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 as a result of an investigation held on October 13, 1995. Claimant was found to have violated Rule 501, by allegedly making sexual and lewd remarks to a female employee of D&T Limousine Service.

The organization has appealed this case primarily on the basis of procedural defects. The Local Chairman in the appeal letter wrote:

Because of these procedural errors, I am asking that Mr. S. Watson be reinstated to his proper place on the seniority roster with full benefits, all monies lost and his record cleared of this discipline.

On October 6, 1995 the Carrier's Law Department notified the supervisor of the claimant that it had received a formal complaint from the female limousine driver. She alleged sexual harassment by the claimant. The Carrier schedule an investigation to be held on October 13, 1995. After the hearing began it was recessed until October 18, 1995. Claimant was dismissed on October 25, 1995.

The record of the incident involving the dismissal is clouded by the fact that claimant was turned in by a fellow employee for the use of alcohol when reporting to work on September 12, 1995. Under the Carrier's "Red Block" rule which deals with employees using alcohol and drugs, claimant was out of service from September 12 until September 28, 1995. However, whether the Carrier violated the "Red Block" Agreement is not before this Board, nor was this Board furnished with a copy of said Agreement.

The Organization claims the Carrier violated rule 75(a) which reads:

(a) Engineers shall not be disciplined without a fair and impartial hearing. Suspension pending a hearing in cases of a serious nature will not be considered a violation of this principle. The engineer charged with the offense will be notified in writing not less than three (3) days prior to the date set for the hearing and the notice shall state the date and location of the hearing and the specific charge or charges. In no instance will an engineer be found guilty on a charge or charges not stated in the hearing notice. Hearing will be conducted by an operating officer within ten (10) days subsequent to the incident under investigation, provided, however, any employee withheld from service will be given a hearing within five (5) days from date held from service. Decision shall be rendered within fifteen (15) days after the hearing. (A decision will be considered as having been rendered as contemplated by this sentence if post-marked within the fifteen-day period.

The record is clear that claimant's supervisors were notified on October 6, 1995 of the alleged offense and the hearing was scheduled within ten (10) days. There was no violation of Rule 75(a).

The organization also claims the Carrier violated Rule 75(d) which reads:

(d) Copy of all hearing notices in which an engineer is charged, and, in the event an engineer is disciplined, a copy of the discipline notice and a copy of transcript of hearing will be forwarded promptly to the Local Chairman of the Brotherhood of Locomotive Engineers. In the event a charged engineer is not disciplined, a copy of the transcript of hearing will be furnished promptly to the Local Chairman on request.

When requested, copy of the transcript of all testimony taken at a hearing will be made available to the charged employee or his representative within two (2) business days following the date upon which the hearing is closed. In the event a hearing is begun and then recessed for a period exceeding two (2) calendar days, a copy of the transcript of that part of the hearing will be made available to the charged employee or his representative within two (2) business days following the date the hearing is recessed.

It appears from the record that the hearing on this matter began on Friday October 13, 1995 at 10:00 a.m. After the testimony of the alleged victim, the hearing was recessed at

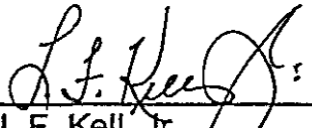
1:15 p.m. and was reopened on Wednesday, October 18, 1995 at 11:40 a.m. The copy of the transcript of the 13th was furnished to the Local Chairman at 11:15 on October 18, 1995. Neither party to this dispute has explained what, "within two (2) business days" means. The Carrier used two business days, the 16th and 17th, to prepare the transcript. The Organization was furnished the copy before the hearing began on the 18th. The Local Chairman was present on both hearing dates and stated in the transcript on the 18th that the Organization had no objections or changes in the transcript of the 13th. This Board finds no violation of Rule 75(d).

The Organization did not receive a copy of the dismissal letter or the transcript until 35 days after investigation was concluded. The Agreement states such will be forwarded promptly to the Local Chairman. While one might argue 35 days is not prompt, the delay did not hinder the Organization's timely appeal of the claim.

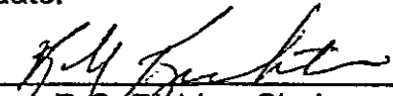
As to the merits of the case, the record is conclusive that the Claimant acted in an improper manner on September 11, 1995 and violated Rule 501. Claimant had 22 years of service at the time of the incident, with one previous discipline for improper conduct, a 90 day suspension for a Rule G violation in 1983. The Carrier cannot ignore conduct such as exhibited by the claimant, however, permanent dismissal in this case is severe. Accordingly, claimant will be reinstated with seniority in tact, but without pay for time lost, and provided the prerequisite Carrier examinations are passed.

AWARD

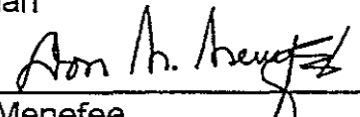
Claim sustained in accordance with the Findings. Carrier is ordered to comply with this award within 30 days of its date.



L.F. Kell, Jr.
Carrier Member



R.G. Richter, Chairman



D.M. Menefee
Employee Member

Dated 7-9-97