

PUBLIC LAW BOARD NO. 5959

Case No. ~~14~~ 30
Award No. ~~14~~ 30

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

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STATEMENT OF CLAIM

Claim on behalf of Engineer D.W. Presley, ID# 040375, for reimbursement of all earnings and benefits lost, including all earnings lost account of attending investigation, recovery of all vacation pay and rights, and service record cleared of all charges resulting from investigation held on July 19th, 1991. Discipline assessed - fifty (50) days actual suspension.

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 assessed a fifty (50) day suspension as a result of an investigation that was held on July 19, 1991. The Carrier found that the Claimant violated Operating Rule 124 when the Claimant's train, R337-12, occupied No. 2 Main Track at Greenwich, Ohio without proper authority on July 13, 1991.

The record reveals there is no doubt that the Claimant's train had no authority to enter the WICH block on the date in question.

The Organization has appealed the case on the basis that the Claimant was denied due process. It takes the position that because the dispatcher testified via telephone Claimant was not able to face his accuser. The dispatcher was not the accuser, but did testify as to the facts in this case over the telephone.

Numerous tribunals have held that the hearing officer is the best judge in determining the validity of the testimony of witnesses. The person conducting the investigation is in a position to determine the demeanor of a witness. When a witness is not present, this is lost.

In this case a recording of the dispatcher's conversation with the Claimant on July 13, 1991 was heard at the investigation. The dispatcher admitted he failed to give authority for the crew to enter the WICH. However, there is no dispute that he crew had no authority to enter the block.

Based on the facts in this case, the Claimant's procedural rights were not violated. However, the Carrier is warned that had there been a conflict in testimony this decision would be different. It is the Carrier's responsibility to see that all persons who have knowledge of an incident under investigation be present at the investigation.

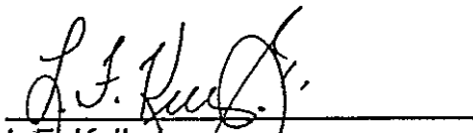
The Claimant violated the Rules, and it was a serious violation. Operating a train over a territory which a crew has no authority can lead to tragic consequences. There is no basis to overturn the discipline.

AWARD

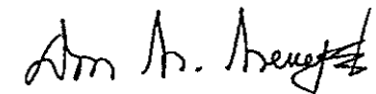
Claim denied.



R.G. Richter, Chairman



L.F. Kell, Jr.
Carrier Member



D.M. Menefee
Employee Member

Dissenting

Dated 7-9-97