

PUBLIC LAW BOARD NO. 5959

Case No. 43  
Award No. 43

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

**STATEMENT OF CLAIM**

Claim on behalf of Engineer C.C. Simmons, ID 040739, for the reimbursement of all lost earnings, expunge all charges and discipline from personal record, and the recovery of all rights lost resulting from an investigation held at New Castle, PA, on March 11, 1997.

**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.

On April 10, 1997 Claimant was dismissed from the service of the Carrier as a result of an investigation held on March 11, 1997. Claimant was removed from service on March 6, 1997 pending the investigation.

At the time of the incident Claimant had 21 years service as a locomotive engineer.

The facts disclosed at the investigation revealed Claimant was engineer of Train E533-26 on March 3, 1997. The train had arrived at its final terminal and the crew, engineer and conductor were instructed to yard its train, then take the locomotive to the engine pit. The train had two locomotives and the Claimant was operating the consist from the trailing unit, while the conductor was on the lead unit. The day was rainy and foggy. At 5:20 PM Claimant, with just the two units ran the Millerstown switch.

The Conductor testified that he tried to notify the Claimant by radio but received no response. He left the cab of the lead unit to get the engineer to stop, but, alas it was too late. The infamous radio failed again.

The Carrier had the radio checked out and it was found to have no defects.

First, the Organization takes the position that the Claimant was improperly removed from service pending the investigation. As this Board has enumerated numerous times, the alleged offense in this case did not warrant removal from service prior to the investigation.

Claimant also claimed a medical condition made him light headed and slightly disoriented at the time of the incident.

Both the Claimant and Conductor were dismissed. However, the Conductor was returned to service in August of 1997. The Organization argues the Claimant's punishment is too harsh. The Carrier avers the discipline was warranted based on Claimant's past record.


There is no question the Carrier's Rules were violated when the crew ran the switch and discipline is warranted. Claimant's work record reveals being promoted to engineer on April 8, 1976. From that date through March 1986, six disciplinary actions were taken; the most severe was a ten-day suspension. From March 1986 until the incident in 1997, two disciplinary actions were taken. The last was a 90 day suspension in August 1995.

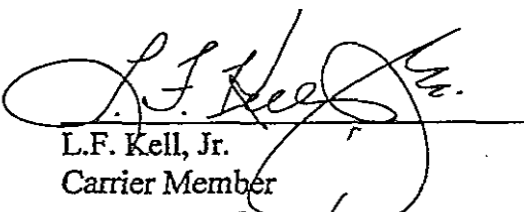
While the Claimant's record is not exemplary, it certainly does not support permanent dismissal, particularly in light of the offense and circumstances in this case.

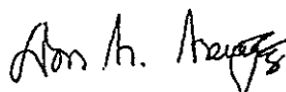
Claimant will be restored to service with seniority unimpaired, with no pay for time lost except for the period March 6, 1997 until April 10, 1997, when the Claimant was improperly withheld from service pending the investigation. This reinstatement is conditional on the Claimant passing a Company physical exam concerning his medical condition that makes him light headed and disoriented.

#### AWARD

Claim sustained in accordance with the findings. Carrier is order to comply with this Award within 30 days of its date.

  
R.G. Richter, Chairman  
Neutral Member

  
L.F. Kell, Jr.  
Carrier Member  
Dated 5/22/98

  
D.M. Menefee  
Employee Member