

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6041**

**JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
GENE L. SHIRE, CARRIER MEMBER
DON HAHS, EMPLOYEE MEMBER**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BNSF SANTA FE, GENERAL COMMITTEE**

and

**BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY**

**Award No. 5
Case No. 5
G. E. Sanders**

*Date of Hearing - October 22, 1997
Date of Award - March 26, 1998*

Statement of Claim:

Claim for Kansas Division Engineer G. E. Sanderson for pay for all time lost while being withheld from service from the Burlington Northern Santa Fe Railway Company while serving a one hundred-twenty (120) day suspension, including pay for time lost attending the formal investigation, and that Mr. Sanderson's personal record be expunged of any mention of the incident of April 13, 1994.

FINDINGS:

Public Law Board No. 6041, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

On April 13, 1994, Claimant Engineer G. E. Sanderson was a member of a train crew operating train L-KS061-13 on Carrier's La Junta Subdivision, when the crew allegedly failed to stop and make an inspection, after activating a hot box detector at milepost 221.4. At the time of the incident the train was being operated by a student engineer, with Claimant serving as an instructor. All members of the crew were cited to attend an investigation, after which Claimant was assessed discipline of a one hundred twenty days suspension. (While the matter was being handled on the property, Carrier unilaterally reduced the suspension to ninety days.) The discipline has been appealed to this Board on a variety of contentions, both procedural and substantive. The Organization also appealed Claimant's revocation of his Engineer's Certification to the Locomotive Engineer Review Board, which body, after review of the record, concluded that procedural

errors by the presiding officer of the investigation substantially injured Claimant, so as to require disapproval of the revocation.

Carrier contends that it was justified in assessing discipline in the matter, because there is no dispute in the record that Claimant was responsible for a violation of its rules, as charged. Carrier says that instead of complying with the rules, Claimant attempted to cut corners, and wait until the train arrived at the next yard before making the required inspection. Carrier argues that the suspension actually served by Claimant was appropriate and was commensurate with the nature of the violation, one that could have resulted in substantial damage to track and equipment, and serious injury to the crew. Carrier notes that Claimant does not have a spotless discipline record, having accumulated 125 career demerits and being dismissed and reinstated in 1983 for being involved in an altercation.

In answer to the Organization's procedural objections, these lack substance, Carrier says. The employees' representatives raised numerous objections, that were addressed by the hearing officer. Furthermore, there is no showing that Claimant was unable to mount an adequate defense in regard to the violations charged.

The Board need not visit the merits of Carrier's case against Claimant because we find the conduct of the investigation to be so seriously flawed so as to render the final results suspect. The conduct of the hearing officer was arrogant and dictatorial. For example, at the outset of the investigation, for no good reason as best this Board can determine, the hearing officer kicked a Union observer out of the hearing. From our review of the record it was never explained why the observer was not allowed to witness the proceedings. Of course, refusal to allow an observer to witness the proceedings does not, *per se*, void the investigation, but in the circumstances that exist here, it seems to have set the tone for the entire hearing.

Also, repeatedly, throughout the course of the investigation the hearing officer improperly limited the scope of Claimant's defense. For example, he refused to allow questioning that might have established that the hot box detector was malfunctioning and/or that the speed tapes were faulty. A hearing officer is not privileged to steer an investigation to only that evidence and testimony that favors the charges that have been leveled against an employee. A hearing officer has an obligation to develop all of the facts, including those that may lean toward exoneration of the charged employee. In this matter the hearing officer in Claimant's investigation woefully failed to fulfill this responsibility. His conduct denied Claimant the fair and impartial investigation he was entitled to receive under the Agreement.

The claim will be sustained, because Claimant was denied a fair and impartial investigation, as required by the Agreement.

A W A R D

Claim sustained.

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ORDER

Carrier is directed to comply with this award and make any payments due Claimant within thirty days of the date indicated below.


John C. Fletcher, Chairman & Neutral Member


Gene L. Shire, Carrier Member


Don Hahs, Employee Member

Dated at Mt. Prospect, Illinois., March 26, 1998