

SPECIAL BOARD OF ADJUSTMENT 1063

Case No. 369  
Award No. 369

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

and

Norfolk Southern Railway Company

STATEMENT OF CLAIM:

Claim on behalf of Lake Division Engineer J. A. Bennett for payment for all time lost and removal of incident from his record, in connection with 10-day deferred suspension assessed for leaving an engine unoccupied and unsecured on May 23, 2000.

OPINION OF THE BOARD:

On May 22, 2000, Claimant was assigned as Engineer on assignment L34L822, when an "efficiency team" stated they observed the engine consist unoccupied and improperly secured on the East Leg Of Wye in the vicinity of Watkins Yard during the early morning hours of May 23<sup>rd</sup>. Following a trial on the charges summarized by the facts stated above, Claimant was given ten days deferred suspension. The Organization appeals, contending there was insufficient evidence to warrant holding a trial. Furthermore, the trial record does nothing to repair this deficiency.

When questioned during the trial, one member of the "efficiency crew" conceded that all control mechanisms of the locomotive were turned off or in neutral position, which was proper for an unoccupied locomotive. However, they remained steadfast in their views regarding the locomotive hand brake which they asserted contained some slack. Claimant's testimony was just as adamant in the view that the engine hand brake had been applied.

So the Board is left with the question of convincing proof concerning the issue as to whether the locomotive unit was left improperly secured. Ordinarily this Board has upheld the Conducting Officer's decision where the issue of credibility arises, but in this case we have two important principles at war, that of credibility and the other, the burden of proof. Proof of

the charge must be established by substantial evidence, not evidence that consists solely of conflicting statements.

The issue concerning the engine being unoccupied apparently did not merit much discussion after it was noted the crew was observing their twenty minutes (lunch).

FINDINGS:

The Agreement was violated.


AWARD:

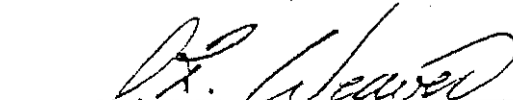
Claim Sustained.

ORDER:

The Carrier shall place the Award into effect within thirty (30) days of the effective date.

Dated at Norfolk, Virginia, this 22nd day of June, 2001.

  
W. F. Euker, Neutral Member

  
S. R. Weaver, Carrier Member

  
P. T. Sorrow, Organization Member

Carrier File: LE-COL-00-10  
Organization File: D-79-00-2