

SPECIAL BOARD OF ADJUSTMENT No. 894

Case No. 1587 Award No. 1587

PARTIES Brotherhood of Locomotive Engineers
to -and-
DISPUTE: Consolidated Rail Corporation

STATEMENT OF CLAIM:

Appeal of Engineer G. T. Everett from the discipline of forty-five days actual suspension assessed as a result of the following:

OUTLINE OF OFFENSE: Your act of extreme negligence while assigned as engineer on train YADE-33 on duty at Dewitt, New York, 11:00 PM, March 6, 1992, when at approximately 7:35 AM, March 7, 1992, you were found to be operating engine 9563 on Track #3 departure in Dewitt Yard with a safety appliance disabled (dead man pedal locked out).

We request the Appellant be paid for all time lost as a result of this incident, his benefits be restored and the discipline be expunged from his record.

FINDINGS: On March 7, 1992, the Claimant was the Engineer on a yard assignment operating Engine unit No. 9563. The Terminal Superintendent, while positioned in the yard tower, testified at the hearing held in this matter that he observed the Claimant slumped down in the seat of his locomotive with both of his feet placed on the fire wall/instrument panel. He, therefore, left the yard tower, went to the Claimant's engine and boarded it. At that time, he saw the Claimant remove his grip from the top of the "dead-man" pedal.

The Claimant, at the investigation, denied the accusation of the Terminal Superintendent. In this respect, he testified that the only time that he had both of his feet up on the fire wall was after he had stopped his engine. He further testified that he had the independent brake on in full service (which, he claimed, nullified the dead-man) he had both feet up on the window. Consequently, because there were no other witnesses who observed the Claimant operating his

engine at the time when the Terminal Superintendent allegedly observed him with his feet on the fire wall, the Carrier was confronted with a basic credibility question.

It is clear that if the Claimant had both of his feet on the locomotive's front fire wall, as claimed by the Superintendent, the engine could not continue to move without some object holding down the "dead-man" safety device. However, the Claimant, as noted here, denies this assertion.

The Board recognizes that the Carrier has the basic right to resolve questions of credibility in discipline disputes. However, these determinations must be based on substantial evidence. This has been defined as "such relevant evidence as a reasonable man might accept as adequate to support a conclusion" (Consolidated Edison Company vs. National Labor Relations Board, 305 U.S. 197,229).

We find that the Carrier's action is not supported by substantial evidence. There are many unanswered questions that were not pursued at the Carrier's hearing. For example: Could the Superintendent have seen the Claimant's feet from his vantage point if the Claimant was in a reclined position? Moreover, the Superintendent testified that he did not see the "dead-man" pedal blocked while the engine was moving. He did testify that he saw a corner of the Claimant's bag on the corner of the pedal when he boarded the engine. However, this does not show that the bag was there during the engine's movement. Nor does it answer the question of whether the bag was heavy enough to depress the pedal.

In summary, the Board finds that the record lacks substantial evidence to support the Carrier's action. Accordingly, the claim is sustained.

AWARD

As specified above.


P. C. Poirier
Carrier Member


Eckehard Muessig
Neutral Member


W. C. Keppan, Jr.
Organization Member

Dated: 11/22/96