

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT

No. 997

CONSOLIDATED RAIL CORPORATION

-VS-

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DOCKET NO. 19999-D
CASE NO. 100

CLAIMANT: M. A. Sargeont

FOR THE CARRIER: S. R. Friedman, ~~Assistant~~ Director
Labor Relations

FOR THE ORGANIZATION: Robert Godwin, General Chairman
BLE

NEUTRAL: Dr, James R. McDonnell

EMPLOYEE'S STATEMENT OF CLAIM

Appeal of Engineer M. A. Sargeont for lost time from discipline of five (5) days suspension, from the Consolidated Rail Corporation, following an investigation held on June 3 and July 7, 1998, into the following:

OUTLINE OF OFFENSE

Violation of NORAC RULE "T" when you marked off sick May 20, 1998 at 1340 hours until 5/23/98 at 0823 hours, which in conjunction with your previous work record constitutes excessive absenteeism.

FINDINGS OF THE BOARD

The Board, after hearing the whole record and all evidence finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by agreement and has jurisdiction of the parties, claim and subject matter which was held on May 18, 1999 in Jacksonville, Florida. The Board makes the following additional findings:

DECISION

The organization raises an important procedure error in the instant claim. The "act of marking off on May 20, is what precipitated the action against Engineer Sargeont." Thus, according to the Agreement Article G-M-11 the engineer must be notified within 7 days. The notice to attend a formal investigation should have been sent on May 27; it was dated May 28, 1998.

In spite of the fatal procedural error in this case, the Board takes note of the Claimant's attendance record. It is dismal, at best, for whatever reason. The Board, therefore recommends that the Carrier Counsel and direct the Claimant on specifically his standing as it relates to his attendance. The Board does not suggest that this counseling take the form of a Letter of Reprimand, but rather a detailed listing of the Claimant's attendance record and it's potential as a disciplinary matter.

AWARD

Claim sustained. The Claimant shall be made whole for any losses.

SR Friedman - Dissent
S.R. Friedman, ~~Assistant~~ Director
Labor Relations

Robert W. Godwin
Robert Godwin, General Chairman
BLE

James R. McDonnell
Dr. James R. McDonnell
Neutral

October 22, 1999
Date

jdm