

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 25979

Docket No. 45933

04-1-02-1-M-2111

The First Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(Brotherhood of Locomotive Engineers

**PARTIES TO DISPUTE:** (

(Kansas City Southern Railway Company

**STATEMENT OF CLAIM:**

“Claim of MidSouth Rail Engineer T.T. Jones for removal of five (5) days suspension assessed on December 17, 2001 with all notations of discipline expunged from his personal work record and compensation for all time lost, including time for attending the investigation, in connection with the alleged violation of KCS General Code of Operating Rule 1.15 in connection with his alleged excessive absenteeism and failure to be available when called for Train 2607 at approximately 0615 p.m. on October 5, 2001.”

**FINDINGS:**

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant T. T. Jones is employed by the Carrier as an Engineer. He was disciplined for absenteeism based on his record of marking off on weekend days during September and October 2001. On October 13, 2001, the following letter was sent to the Claimant:

“Arrange to be present in the Conference Room, KCS Office Building, 4601 Shreveport-Blanchard Highway, Shreveport, Louisiana at 1600 hours October 17, 2001 for a Formal Hearing to ascertain the facts and determine your responsibility, if any, in connection with your alleged excessive absenteeism and failure to be available when called for Train 2607 at approximately 0615 p.m. on October 5, 2001.

The Carrier will have as witness(es), Don Warren, Trainmaster and additional witnesses may be called. If you desire representatives and/or witnesses, you may make arrangements in accordance with your applicable schedule of agreement.

Respectfully,  
J.D. Freeman  
Investigating Officer

cc: Raymond Aycock, Local Chairman, BLE  
Don Warren, Witness  
Human Resources”

The Hearing was held on December 5, 2001. A transcript of the Hearing was made. The Hearing transcript ran to 50 pages. The bulk of the transcript records exchanges made between Mr. Aycock, the BLE representative, and Mr. Freeman, the Carrier Investigating Officer, concerning procedural issues, the Hearing Officer rule, and failure to call witnesses. The Hearing transcript contains straightforward factual testimony from Trainmaster Don Warren, who instigated the Investigation into the Claimant's attendance record based on the reports of attendance he routinely receives and reviews. As a result of the Hearing, the Claimant was found guilty as charged and assessed a five-day actual Suspension.

The Board reviewed the record and studied the many arguments in detail presented by the parties. The Board also reviewed the numerous Public Law

Boards and Board Awards rendered in the past on many of the issues present in this case.

It is the conclusion of the Board that since this action represents the first discipline the Claimant has received for absenteeism, a five-day Suspension is more severe than is justified. In keeping with the concept of progressive discipline universally accepted in the railroad industry, the Carrier should more appropriately begin the discipline of the Claimant with a Letter of Warning.

Claim is partially sustained. The penalty shall be reduced to a Letter of Warning. The Claimant shall be made whole for all lost wages.

**AWARD**

Claim sustained in accordance with the Findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division**

Dated at Chicago, Illinois, this 10th day of March 2004.

