

PUBLIC LAW BOARD NO. 4767

AWARD NO. 19

CSX TRANSPORTATION INC.

VS.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Remove from Mr. W. L. Bell's personal record, the 30 (thirty) demerits assessed to him as a result of the investigation held on June 14, 1989.

STATEMENT OF FACTS: On June 2, 1989, Engineer W. L. Bell, Jr., (hereinafter claimant) was assigned and working Yard Job Y-50302 at the carrier's Florence Yard. At approximately 2145 hours claimant and his crew began to move locomotive CSXT 1189 through the crossover from "Short 50" to the "Running Lead." The field switchman, Mr. L. A. Cantey was riding the lead end of the locomotive as it passed through the crossover. During this movement claimant's locomotive struck CSXT 998538, an empty gondola, located on the fireman's side of the engine.

As a result of such collision claimant and his crew were noticed to attend an investigation to determine each member's responsibility, if any. Following the Investigation Division Manager J. A. Drake reviewed the evidence and published his decision, stating in pertinent part as follows:

* * * *

"This has reference to the investigation that was conducted in Florence, S.C. on June 14, 1989 in order to develop facts and place responsibility, if any, in connection with the sideswipe involving Engine CSXT 1189 and CSXT 998538, an empty gondola at approximately 2145 on June 2, 1989 at the crossover from North end of Short 50 to the Running Lead while you were a member of Y-50302 working on Florence Yard.

* * * *

Based on these facts and others presented during the course of this investigation you are guilty of violating Safety Rule 890 which states in part 'Temporary or unexpected instructions near the track should always be watched for because conditions change from day to day and even from hour to hour.' for your failure to ensure that the empty gondola CSXT 998538 was in the clear prior to making your move through the crossover switches.

For your responsibility in this matter you are assessed discipline in the form of Thirty (30) demerits to be placed on your personal record."

* * * *


Such decision was unsuccessfully appealed and thereafter the dispute was processed to this Board for final resolution

FINDINGS: Under the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the

meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement and has jurisdiction of the parties and subject matter.

The credible evidence indicates that the area of operation is marginally illuminated, and Field Switchman Cantey was riding the leading end of the locomotive and responsible for directing the movement. Notwithstanding his (Cantey's) vantage point and lookout responsibility, there is no evidence that raises a presumption that he (sic) maintained a proper vigil or sounded a timely warning to claimant. Because claimant had to rely on his crewman/lookout, and was not proven to be operating at a patently unsafe speed, we find no preponderant evidence of wrongdoing or a material rules violation.

AWARD: Claim sustained. Carrier is directed to implement this award
within 30 days of the effective date hereof.


DON B. HAYS, Neutral Member


A. B. MONTGOMERY, Carrier Member


E. L. HAYDEN, Organization Member

11/8/96
DATE