

PUBLIC LAW BOARD NO. 4767

AWARD NO. 8

CSX TRANSPORTATION INC.

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Pay all lost time earnings, including earnings lost while attending the investigation, as the result of being suspended for alleged violation of Rule 98-A in connection with CSX train Extra 8621 South allegedly fouling the N-S crossing at Andrews Yard prior to gates being set against the N-S tracks.

STATEMENT OF FACTS: On or about February 28, 1987, Engineer E. M. Sellers (hereinafter claimant) was called to report for duty (1800 hours) in Columbia, South Carolina, to protect extra engineer's service on a North Wateree coal train (Train Extra 8621). With claimant aboard Extra 8621 North departed Columbia, ran to North Wateree, spotted cars to be unloaded, picked up the empty cars and began the return (south) trip to Columbia.

Upon their arrival at Andrews Yard, a location where the CSX rails cross the N-S tracks, Mr. Sellers avows that he stopped the train prior to fouling the N-S tracks. Brakeman Segars recalls that he dismounted the lead engine, set the crossing gates against the intersecting line (the N-S), did not observe any conflicting movement and signaled Engineer Sellers ahead. Their

train then proceeded over the crossing en route to the Lady St. office.

Contrary to such recollections, a crew of a Norfolk-Southern train reported to their supervisor that a CSX train had fouled the N-S/CSX railroad crossing at such location before the non-electrically locked gates were placed in stop position.

Subsequently the carrier was informed that the CSX train involved was Extra 8621 South. Responding to such advisory the crew on Extra 8621 North was noticed to attend an investigation to determine responsibility, if any. Following such investigation Division Manager G. M. McNeill reviewed the evidence, concluded that claimant was at fault (Rule 98-A) and assessed a 15 day disciplinary suspension. Such decision was timely albeit unsuccessfully appealed. Thereafter the dispute was processed to this Board for 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 organization raises a threshold procedural objection, arguing that the carrier failed to comply with the limitation provisions prescribed by the contract (Article 30). Specifically counsel for the organization points to the lapse of seventeen days between the incident (2-28-87) and the investigation (3-17-87); in addition there was a lapse of eight days between the delivery of the (investigation) notice (3-9-87) and the

investigation (3-17-87). Each of these delays are argued to be a fatal procedural error.

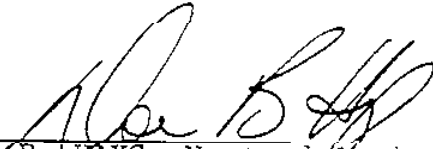
Counsel for the carrier denies any procedural error, arguing that the contractually measured limitation periods can only be initiated by actual notice (knowledge of the incident). He avows that no responsible (CSX) carrier official had notice of this incident until shortly before the (3-9-87) publication of the investigation notice.


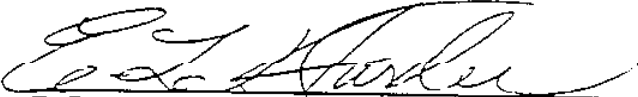
We have compared these allegations to the credible evidence of record and are persuaded that the carrier's actions (notice/investigation) did not substantially comply with the contractual limitations cited by the organization. Specifically such (credible) evidence raises the presumption that the carrier (responsible official) had actual (constructive) notice of the incident and the train crew involved, on or near the date of occurrence. To effectively rebut such presumption, the carrier had the burden to offer evidence showing the actual delay in receiving the information, and the effect it (delay) had on the carrier in initiating notice and the investigation. We find no such compelling evidence of record.

AWARD: Claim sustained on procedural grounds described hereinabove. We make no finding or conclusion regarding the

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substantive issues raised in this appeal. Carrier is directed to implement this award within 30 days of the effective date hereof.

  
DON B. CHAYS, Neutral Member

   
A.B. MONTGOMERY, Carrier Member E.L. HAYDEN, Organization Member

  
DATE