

PUBLIC LAW BOARD NO. 5959

Case No. 53
Award No. 53

Brotherhood of Locomotive Engineers)
)
 vs) PARTIES TO DISPUTE
)
 CSX Transportation, Inc.)

STATEMENT OF CLAIM

Claim of Engineer C. R. Pullum for the removal of a 30-day suspension assessed for his violation of Operating Rule 104 on November 27, 1996.

FINDINGS

This Board finds the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction over the dispute involved herein. The parties to said dispute were given due and proper notice of hearing thereon.

Claimant was suspended for 30 days as a result of an investigation held on December 27, 1996. At the conclusion of the investigation Carrier found that Claimant violated Rule 104, which reads:

The employee handling switches, derricks or gates is responsible for the position of these switches. This does not relieve other crew members of such responsibility, if they can see the position of the devices.

The Organization has appealed this case on two basis. First it argues the Claimant was not afforded a fair and impartial hearing because a member of the crew was not present at the hearing. It also argues the Claimant did not violate Rule 104.

The facts are that on November 27, 1996 Claimant was working as engineer on yard job Y214-27 in Baltimore Terminal. At around 7:45 p.m. the crew shoved a cut of cars down track #4 into track #12. After setting out some cars Claimant made a reverse move out

of track #4 and although unable to see the switch points of the Andrea Street crossover switch, operated the train through the switch, derailing CSXT 203312.

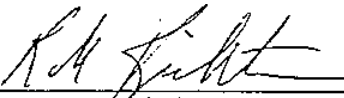
The Carrier argues that it proved Claimant violated Rule 104 after a fair and impartial hearing.

The Organization is right in its position and Carrier failed to give the Claimant a fair and impartial hearing when it conducted the investigation without a member of the crew available to testify. Other testimony showed that this absent crew member saw the derailment and stopped the movement. There was also considerable questioning about another crew working in the area, but there was no testimony from any member of that crew.

The Carrier also failed to prove Claimant violated Rule 104. The record is void of any evidence that Claimant handled the Andrea Street switch. There was testimony that the Claimant could not see the switch points. Therefore, Rule 104 was not violated as far as the Claimant is concerned.

AWARD

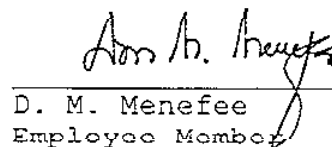
Claim sustained. Carrier is ordered to comply with this Award within 30 days of its date.



R. G. Richter, Chairman
Neutral Member



L. F. Kell, Jr.
Carrier Member



D. M. Menefee
Employee Member

Dated

7/3/98