

PUBLIC LAW BOARD NO. 5959

Case No. 54
Award No. 54

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

STATEMENT OF CLAIM

Claim on behalf of Engineer C. R. Martin, ID 446350,
for reimbursement of all earnings and benefits lost
including all earnings lost on account of attending an
investigation on July 8, 1997. Discipline assessed:
90 Days Actual Suspension.

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 90 days after an investigation held on July 8, 1997. After the investigation the Carrier determined that Claimant violated Rule 34 which reads:

Crews of trains handling Plate F box cars, high side gondolas, open top hoppers or covered hoppers loaded with 95 tons or more and having a cubic capacity of 3800 cubic feet or greater must observe these cars for excessive rocking motion. If excessive rocking motion is observed, immediate action must be taken to reduce speed to control the rocking motion. Trains handling the above equipment at location designated in special instructions will avoid operation in the range of 14 to 21 mph. If speed cannot be maintained at or above 22 mph, the speed of the train must be reduced to below 14 mph.

The facts ascertained at the investigation revealed that Claimant was the engineer of Train D799-21 on June 21, 1997. At approximately 3:30 p.m. the train derailed its last five cars. At the time of the derailment the Claimant was operating at a speed of 19 mph. The record reveals that the consist of the train included a high cube car. The Carrier rules require such a train to

maintain a speed of at least 22 mph. However, if unable to do so, the train must be operated at no more than 14 mph.

The Organization argues that Claimant was improperly withheld from service pending the investigation. It also argues that the Carrier was unduly harsh. The Claimant is an employee with 33 years experience in the transportation department with 22 years as an engineer. Until this incident Claimant's personal record is void of any disciplinary action in those 35 years.

The Carrier argues it proved a violation of Rule 34 and that the discipline imposed was appropriate.

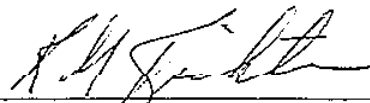
First the Organization is correct that the Carrier improperly removed the Claimant from service pending the investigation.

Second, the Carrier proved the Claimant violated Rule 34, and that the hearing was fair and impartial.

Accordingly, the Carrier is to reimburse the Claimant for all time lost from the date removed from service until the date of the disciplinary letter. As to the harshness of the discipline imposed, a 90 day suspension for a first offense in 35 years, the Organization's position is well taken. The discipline will be reduced to the time lost from the date of the disciplinary letter until the completion of the 90 day period. The record before the Board is void of the above dates.

AWARD

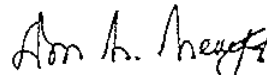
Claim sustained in accordance with the findings. Carrier is ordered to comply with this Award within 30 days of its date.



R. G. Richter, Chairman
Neutral Member


T. F. Keitt, Jr.
Carrier Member

Dissenting



D. M. Menefee
Employee Member

Dated 7/8/98