

SPECIAL BOARD OF ADJUSTMENT NO. 1084

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS
TO)
DISPUTE) WHEELING AND LAKE ERIE RAILWAY

STATEMENT OF CLAIM:

Claim of Engineer William Spier for removal of discipline, pay for all time lost (including time spent attending investigation), clearing of record, and restoration of profit sharing, in connection with discipline of nine (9) days actual suspension and denial of profit sharing assessed following formal investigation conducted June 9, 1997 in violation of Article 19 of the Schedule Agreement. (Case No. 99-05)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Contrary to Carrier contentions the record fails to establish that the Claimant, an Engineer on Train 562-09, a local assignment, had a shared responsibility along with the Conductor for the improper pulling and spotting of cars for a customer, GenCorp, at about 11:15 PM on June 9, 1997.

The incident involved a complaint that the crew had improperly switched GenCorp by pulling four loads out of track rails 3 and 4 and placing them in track rails 5 and 6 instead of placing empty cars into the facility.

Nothing of record shows that the Claimant had been privy to information as to the precise details of the switching or service moves in question. As both the Conductor and Brakeman of the assignment testified, although the Claimant had a general knowledge of how GenCorp was serviced at some times in the past, he did not have a switch list as to where cars were to be specifically placed, spotted or removed from the facility. Nor does the record establish that the Claimant was either a part of or aware of any alleged discussions between the ground crew members and the representatives of GenCorp as to how they desired the plant be serviced on the date at issue. It appears that the Claimant relied on and responded to radio commands from the Conductor and the Brakeman as to movement of the engine consist in the handling and switching of cars for the facility.

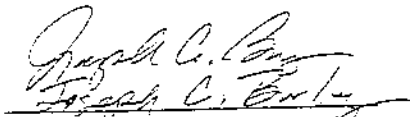
Under the circumstances, the Board finds that the Carrier has failed to meet a necessary burden of proof to justify that the Claimant had a shared culpability for any failure that may have existed in servicing the GenCorp facility on the date at issue. Accordingly, the claim will be sustained.

AWARD:

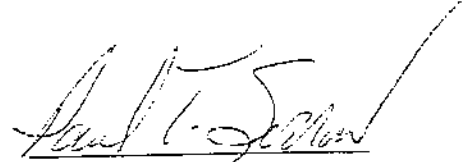
Claim sustained.



Robert E. Peterson
Chair & Neutral Member



Rockwell M. Villare
Carrier Member



Paul T. Sorrow
Organization Member

Brewster, OH
March , 2000