

SPECIAL BOARD OF ADJUSTMENT NO. 1084

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

STATEMENT OF CLAIM:

Claim on behalf of Engineer Roy A. Jones for all time lost in connection with being held out of service pending investigation from June 5, 1998 through June 15, 1998, pay for attending, and removal of discipline assessed in connection with investigation held June 15, 1998. (Case No. 99-07)

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.

The disciplinary suspension here at issue arises from charges and a Carrier finding that the Claimant was responsible for a failure to report for work on time and thereby an unnecessary delay to his train assignment.

On June 4, 1998, the Claimant was the Engineer for Train Assignment 221-22-04, with a report for and on duty time of 5:00 A.M. at Hartland, Ohio, where both the Claimant and his Conductor were to be transported by taxi to Brewster, Ohio, to take charge of their train. The Claimant did not arrive at Hartland until about 5:35 or 5:40 A.M., or 35 to 40 minutes past the time he was scheduled to go on duty. This, the Carrier urges, caused a delay in the departure of the crew from Hartland and a delay in the crew taking charge of their train at Brewster.

While the Claimant admits that he overslept, it must also be considered that after showing up at Hartland that the Claimant and his Conductor taxied to an intermediate point, namely, Ashland, Ohio, as in the normal course of handling crews, waited for some 20 minutes for another cab to take them to Brewster, and that upon arriving at the latter location were confronted by a supervisory official who, after chiding the Claimant for being late, then proceeded to remove the Claimant from service pending an investigation.

Following the company investigation, which was held on June 15, 1998, the Claimant was notified by letter dated July 1, 1998 that he was determined guilty of violating certain operating rules and assessed discipline in the form of time already held out of service pending the investigation, i.e., a period of 11 days.

As the Organization urges, we do not find the particular circumstances of record to have given rise for the Claimant to have been adjudged as having committed a serious offense mandating that he be held out of service pending investigation. Article 19(b)(1) prescribes that engineers will not be withheld from service pending investigation except when a serious act or occurrence is involved, i.e., Rule "G", Insubordination, Extreme Negligence, or Dishonesty. Further, Agreed-Upon Question and Answer No. 1 to Article 19 defines Extreme Negligence as follows:

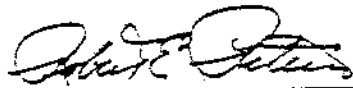
The right of Management to remove an engineer from service allegedly involved in extreme negligence must be used sparingly and duly confined to transgressions of high risk or danger so that Management can say with justification that, notwithstanding the sanctity of the provisions of this rule, the protection of life and limb of affected employees and protection of Carrier property or property entrusted to custody of the Carrier, cry out for or demand the immediate removal.

The Board also finds worthy of note argument that since the Claimant and his Conductor had to wait 20 minutes for the taxicab from Brewster to arrive at Ashland that even had the Claimant been on time for the cab ride from Hartland to Ashland, that they would only have had to wait at Ashland that much longer. Thus, it is urged, that the real cause for any delay was poor taxicab service.

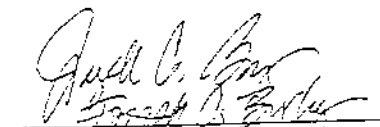
It being obvious to the Board that it was not necessarily the Claimant's tardiness in reporting for duty that was responsible for a delay to any train service, and that the Carrier was remiss in withholding the Claimant from service pending an investigation for what appears to have been other than an offense subject to such action in application of Article 19, and, further, the Claimant having a heretofore clear record, we find that an affirmative award is warranted. Accordingly, the claim will be sustained.

AWARD:

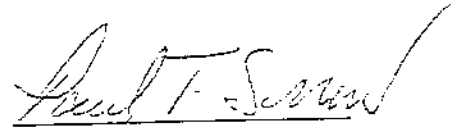
Claim sustained.



Robert E. Peterson
Chair & Neutral Member



Rockwell M. Villard
Carrier Member



Paul T. Sorrow
Organization Member

Brewster, OH
March 1, 2000