

PUBLIC LAW BOARD NO. 6649

Award No.
Case No. 2

PARTIES TO DISPUTE:
(Brotherhood of Locomotive Engineers
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

Claim of Engineer Michael J. Rogers that the discipline of 10 days suspension assessed as a result of investigations on September 29 and October 17, 1997, be removed from his personal record and that he be paid for all time lost.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant was the Engineer on train MNOSH1 running New Orleans to Shreveport. A Roadmaster and an Assistant Engineer were in an inspection car ahead of Claimant's train. They pulled into a siding then positioned themselves on each side of the main line to conduct a roll-by inspection.

Claimant was observed standing and looking towards the seat occupied by the Conductor at the window opposite to Claimant.

When the two Supervisors arrived at Baton Rouge, they advised the Trainmaster of what they witnessed - i.e. the Conductor sitting in a reclined position with his head tilted back, face towards the roof of the engine cab.

The two employees were advised an investigation was being established:

"...to ascertain the facts and determine your responsibility, if any, in connection with the Conductor being observed in an alleged reclining position by A. J. Sonnier, Assistant Superintendent of the Gulf Division, while you were serving as crew members on board Train No. 55 on August 30, 1997, at approximately 1035 hours."

At the conclusion of the investigation, the Carrier assessed Claimant a 10-day suspension for violation of Rule GCOR 1.4, 1.6 and 1.47, which read:

"1.4 Carrying Out Rules and Reporting Violations

Employees must cooperate and assist in carrying out the rules and instructions. They must promptly report any violations to the proper supervisor. They must also report any condition or practice that may threaten the safety of trains, passengers, or employees, and any misconduct or negligence that may affect the interest of the railroad.

1.6 Conduct

Employees must not be:

1. Careless of the safety of themselves or others
2. Negligent
3. Insubordinate
4. Dishonest
5. Immoral
6. Quarrelsome
- Or
7. Discourteous

It should be noted here that the Rule 1.6 of the Kansas City Southern Railway Company General Code of Operating Rules has been superseded in the August 1996 Special Instructions and that this is no longer an applicable rule as it is no longer in effect.

1.47 Duties of Trainmen and Enginemen

The conductor and the engineer are responsible for the safety and protection of their train and observance of the rules. If any conditions are not covered by the rules, they must take every precaution for protection."

The testimony of the Claimants conflicted with that of the Carrier witnesses. The Conductor, who was in the "fireman's seat" told the Trainmaster when first questioned that he was awake; that he saw the Assistant Superintendent sitting in the car. The facts

are that the Aselstant Superintendent was standing on the opposite side, observing the Engineer.

This fact is sufficient to impugn the testimony that the Conductor was not sleeping. Furthermore, the action of Claimant when he became aware a roll-by inspection was to take place were those of someone attempting to wake another crewmember.

It is therefore clear to this Board that the Carrier clearly established sufficient evidence of Claimant being in violation of the Rules cited.

Carrier issued a 10-day suspension to be served at the Carrier's discretion. There is nothing to show that Claimant actually served the ten-day suspension.

Claimant's record is to be cleared of this matter, but there will be no pay for time lost.


AWARD


Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.


Robert L. Hicks, Chairman & Neutral Member


Marie W. Geiger, For the Employees


Kathleen Alexander, For the Carrier

Dated: 11/30/05