

PUBLIC LAW BOARD NO. 6649

Award No.
Case No. 20

PARTIES TO DISPUTE:

(Brotherhood of Locomotive Engineers

(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

Claim on behalf of Engineer Kevin L. Newberry for the formal reprimand assessed as a result of the investigation held on April 22, 2005.

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.

The engine assigned to Claimant on April 8, 2005, was a new engine. Claimant, in an attempt to open the sliding window, cut his finger when it suddenly moved as he was tugging on it.

Although it bled, after a trip to the hospital, the wound was anything other than severe. A bandaid was applied and Claimant returned to the job.

An investigation was held on April 22, 2005, and Claimant was subsequently assessed a formal reprimand.

The Board readily concedes the incident occurred, but cannot agree the cut finger was an act of carelessness. As stated, the unit was new. In attempting to open the window, it became stuck. Claimant applied more pressure and it popped open catching his ring finger.

There was some confusion as to whether it was a Carrier unit or a BNSF unit. That issue was resolved in favor of the BNSF. There was some second-hand testimony from someone on the BNSF that there was nothing wrong with the window. This report came a week after the incident. It was supposed the BNSF response was by a mechanical person, but this was never established.

To this Board the injury sustained was not necessarily his fault, nor does the record show any carelessness in Claimant's action.

The claim will be sustained.

AWARD

Claim sustained.

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
Robert L. Hicks, Chairman & Neutral Member

Merle W. Geiger
Merle W. Geiger, For the Employees

George F. Lef
Kathleen Alexander, For the Carrier
George F. LEIF

Dated: 2/14/07