

PUBLIC LAW BOARD NO. 6649

**Award No.
Case No. 3**

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

STATEMENT OF CLAIM:

Claim of Engineer Kenneth G. Smith that the discipline of 5 days actual suspension assessed as a result of investigation on November 21, 1957 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 working on a yard assignment at Kansas City. The last two cars of a 13-car cut were loads of lumber on bulk load flats, each of which had a long sliding drawbar.

The crew attempted three different times to kick the cars, but twice the cars did not separate, instead when the slack ran out the engine was jolted. Claimant admitted he was sitting on the edge of his seat when the first jolt occurred that threw him against his seat. He refused medical treatment and in lieu sought out a chiropractor and spent several days relaxing.

The cars did not separate from the engine when they tried the release from the flat car because a piece of metal was wedged in the coupler lock. After the second attempt to kick the two cars, the operation was successfully completed by using the release lock

on the engine.

The matter was of the Engineer taking some time off to seek chiropractor services that prompted an investigation into the event.

As a result of that investigation, Claimant was assessed what amounts to a 5-day actual suspension.

Reviewing the transcript it is admitted by Claimant that he was not properly seated and at the first jolt he was slammed back against his seat back. He stated at the second jolt, after being properly seated, nothing occurred.

The Carrier found Claimant culpable for the charges assessed and issued the discipline of a 5-day actual suspension.

The Board agrees with the findings, i.e., that Claimant admitted he was not properly seated, but reviewing Claimant's record the Board notes one incident in 1979 prior to this incident. It is believed this matter would be better served if this incident is removed from Claimant's record, but without any pay for time Claimant may have 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: MAY 1, 2006