

PUBLIC LAW BOARD NO. 6884

**Award No.
Case No. 15**

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

STATEMENT OF CLAIM:

Claim of Engineer T. E. Loebig for removal of 45 days actual suspension from his record with pay for all time lost and all rights restored unimpaired.

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.

On the morning of September 18, 2003, on or about 1000 hours, a member of Carrier's efficiency test team came up on Engine KCS 4772 in a tie-up location. He boarded the unit to determine if it had been secured before it was left unattended. He found that it had not been properly shut down. The record reflected Claimant was the last Engineer assigned to unit 4772.

The Carrier then set up an investigation:

"...to ascertain the facts and determine your alleged responsibility, if any, in connection with your alleged failure to properly secure locomotive KCS 4772 before final tie-up. This incident occurred on or around MP 835.0 (Reserve, LA) at approximately 1100 hours on September 18, 2003 while serving as Engineer of RNR102."

The Carrier believing it had satisfied the burden of furnishing sufficient evidence then assessed Claimant a 45 actual day suspension.

The investigation has been reviewed, and in the Board's view it finds that it cannot support the discipline rendered.

Brought forth in the investigation was the fact that Claimant has worked this assignment off and on for some time. He had, on numerous occasions, left an engine standing. Claimant argued he did leave the engine in the manner required by the Rules. Also established was the practice that another assignment does, on occasion, use the same engine. In other words, perhaps the other Engineer left the unit in a manner that did not meet the requirements of the Rules.

Furthermore, Claimant's Representative protested the absence of the Conductor arguing both were responsible for complying with the Rules.

Carrier's witness did not deny the occasional use of the engine by another crew after Claimant abandoned it around 0130 hours. Furthermore, Claimant's Representative protested the absence of the Conductor arguing he was jointly responsible for securing the engine. When Claimant asked the Carrier witness about the Conductor, the witness responded by saying he had no idea.

The Carrier witness admitted that the area the engine was abandoned in was by a housing development and there was no fence around the area. The company witness admitted they were not to lock the engine cab door, as a number of locks did not work properly.

The Board finds that too much unfavorable testimony left too many openings in the Carrier's effort to issue discipline. Particularly Claimant's excellent test score in abandoning engines and the fact he knew the efficiency team was up and around.

The claim will be sustained. Claimant is to be paid for all time lost related directly to this incident with all traces of this matter cleared from his record.

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 adoted.



Robert L. Hicks, Chairman & Neutral Member



Merle W. Gelger, For the Employees



George Lef, For the Carrier

Dated: *August 11, 2006*

