

PUBLIC LAW BOARD NO. 6884

**Award No.
Case No. 17**

PARTIES TO DISPUTE:

(Brotherhood of Locomotive Engineers

(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

Claim of Engineer Roy A. Cordova for removal of 45 days actual and 45 days record suspension from his record, with pay for all time lost and all benefits 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.

Claimant, on February 20, 2003, was the Engineer assigned to train H-KCSH-20 running Kansas City, Missouri, to Pittsburg, Kansas. About 18 miles from Pittsburg, Carrier has in place a voice-activated Trackside Warning Detector. When a train passes the detector, a message is broadcast automatically stating "proceed", providing the device detected no abnormalities.

The Carrier, as they are required to do by the FRA, was conducting efficiency tests. They either shut off the radio at the detector or turned it down. Either way, they intended to silence the detector which then would require the crew to have a run-by visual inspection. This crew, however, did not conduct a run-by as the Rule required.

As a result, an investigation was scheduled for February 23, 2003:

"...in connection with your alleged failure to inspect your train as indicated

by the Trackside Warning Detector located at MP 110.4, on the Pittsburg Subdivision at approximately 1223 hours on February 20, 2003, while you were serving as crew members of H-KCSH-20.

After mutually agreed postponements, the investigation was held June 9, 2003. The Carrier believing they furnished sufficient evidence of Claimant's violation of the Rules assessed him a 45-day actual suspension and a 45-day record suspension (which he did not have to serve).

After a review of the transcript, it is this Board's opinion that the Carrier did not sustain its burden of furnishing substantial evidence of Claimant's culpability for the charges assessed.

The Carrier witness (who was one of the two officials that comprised the efficiency team) testified that the radio automation was silenced. He testified the radio was shut off. Any irregularities would be recorded but the automated voice command "proceed" was silenced. However, both crewmembers testified they heard "proceed" and that is why they did not conduct a run-by.

The missing member of the two-person team was the one who either turned the radio off or down and this becomes the center of this incident. If the radio was turned off, no one could have heard "proceed". If it was just turned down, it is possible that it did broadcast the "proceed" command heard by the train crew but not necessarily heard by the testifying Carrier witness.

With this matter unresolved, the burden of proof was not satisfied. Why the witness was not present is an unknown but vital to the determination of guilt or innocence. The claim for pay for all time lost and the removal of this incident from Claimant's record is 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, Chairman & Neutral Member



Merle W. Geiger, For the Employees



George Leif, For the Carrier

Dated: August 11, 2006

