

PUBLIC LAW BOARD NO. 6884

**Award No.
Case No. 19**

PARTIES TO DISPUTE:

(Brotherhood of Locomotive Engineers

(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

Claim of Engineer Gary Gilcrease for removal of 10 days actual and 35 days record 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 March 23, 2004, a derailment occurred at DeQueen. As usual, the incident was investigated and on March 25, 2004, the train and engine crew were advised an investigation was scheduled to:

"...determine your alleged responsibility and or involvement, if any, in connection with failure to control a cut of cars while switching on or around MP 433, DeQueen, AR resulting in the derailment of the KCS 478 and KCS 482 causing track and equipment damage. This incident occurred at approximately 1600 hours on March 23, 2004, while serving as crew members of the RAD103."

After multiple mutually agreed to postponements, the investigation was convened on June 15, 2005. Following the investigation, Claimant was assessed a 10-day actual suspension and a 35-day record suspension.

After thoroughly reviewing the transcript, the Board finds the Carrier has not

furnished sufficient evidence to support assessing Claimant any discipline.

Everyone agrees the rail simply turned over under the car. The parties debated the condition of the track. The Carrier said the derailment was not caused by a track condition (i.e., rotting ties) and the Organization argued it was the condition of the track.

The Organization presented sufficient evidence to convince this Board that it was the track and not train handling.

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, Chairman & Neutral Member



Merle W. Geiger, For the Employees



George Leif, For the Carrier

Dated: 10/20/06