

PUBLIC LAW BOARD NO. 6884

Award No.  
Case No. 20

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

**STATEMENT OF CLAIM:**

Claim of Engineer J. R. Scott for reinstatement 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, a veteran of 28 years with no history of any disciplinary problems (at least none that have been included in this record), was dismissed from Carrier's service effective December 30, 2004, for his failure to comply with instructions of a Supervisor.

The investigation leading to the dismissal establishes that Claimant had a serious crossing accident when his train struck a semi with a heavy crane causing the derailment of his engine.

The Supervisor assigned to investigate the accident requested that Claimant complete an injury report. Claimant asked to be excused from completing said report contending he was "shook up" but believed he was not injured. Claimant then went home. At 7:35 AM on the same day, a Supervisor called Claimant at home to check on his well being. Claimant stated he was stressed out but otherwise he was okay.

The Supervisor on December 1 was unable to reach Claimant on four different occasions. Finally, in the early evening of December 2, the Supervisor contacted Claimant who then informed the Supervisor that he just returned from the emergency room where he was diagnosed with lumbar strain plus lumbar and back pain.

The Supervisor stated under the circumstances Claimant must file an injury claim. Claimant stated he would meet with the Supervisor the next morning, but he did not show. In fact, nothing was heard from Claimant for the next seven days.

Because Claimant ignored the instructions of the Supervisor, the Carrier wrote Claimant establishing an investigation:

"...in connection with your alleged failure to comply with instructions issued to you by Trainmaster Lane Bonds wherein you were instructed on December 1, 2004 to report to him on December 2, 2004 to complete the proper forms for an alleged personal injury which occurred on November 30, 2004."

Claimant had no believable alibi for not completing the injury report as instructed. As a result of the evidence brought forth in the investigation, the Carrier dismissed Claimant from its service.

As stated, Claimant was a 28-year veteran of the Carrier with no disciplinary record. However, his seniority in this case works somewhat against his regaining his seniority and employment rights.

Every Carrier this Neutral has worked for or with stresses safety and the importance of the injury report. Claimant did know about the injury report as he brought a completed report with him to the investigation, but this was not timely, nor was his alibi for not contacting the Trainmaster sufficient to offset his insubordination.

Claimant has been out of service since December 30, 2004. Because of his longevity of employment with no disciplinary record, the dismissal will be reduced to a


long suspension but without any pay for time lost.

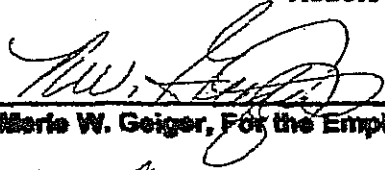
**AWARD**

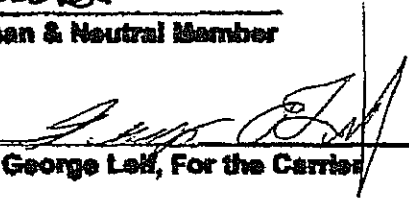
Claim sustained in accordance with the Findings.

**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

  
\_\_\_\_\_  
George Lutz, For the Carrier

Dated: *MAY 1, 2006*

