

PUBLIC LAW BOARD NO. 6884

**Award No.
Case No. 22**

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

STATEMENT OF CLAIM:

Claim of Engineer Walter Cornish for reinstatement with pay for all time lost and with 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 had established seniority rights to work in the East St. Louis Yards. In this instance, because of a shortage of Engineers at Shreveport, the Carrier working with the Union arranged some of the surplus Engineers at East St. Louis to "borrow out" to the Carrier at Shreveport Yards.

On the date of the incident, Claimant was called to work a night yard assignment at Shreveport. In completing an assignment ordered by the Yardmaster, the engine Claimant was controlling ran into a road consist who the Yardmaster had instructed to enter a specific track and double some excessive cars to another track. Both units were attempting to use the same lead.

Claimant's engine with him at the control ran into the side of the road units that also were entering the lead at the same moment that was Claimant's unit. The damage

was approximately \$150,000 including the cost of rerailing the one unit that derailed.

The Carrier thus established an investigation calling in both the Yard Crew and the Road Crew. Following the investigation, the Carrier advised Claimant he was dismissed from Carrier's service.

After reviewing the 174 pages of the transcript and its 23 exhibits separating the wheat from the chaff to find nuggets of fact, this Board finds that this is a prime example of failing to communicate. The Yardmaster is just what the title infers. He/she controls the Yard operations. In this instance, he failed to advise Claimant and crew of the presence of a road train entering the Yards. In fact, the Yardmaster instructed the Road Crew to pull into one track and double some surplus cars to another track, thus two assignments were intended to use the same lead.

Claimant was a "borrowed engineer" who spent ten years working in a small yard with only 4 to 6 trains a day whereas at Shreveport there are 36 to 40 trains a day.

Claimant said he looked ahead to the lead when pulling a cut from the rip track, and noted the switches were lined properly for his movement on the lead. He did not know, apparently, that the Shreveport switches, or most of them anyway, are of the so-called variable type that permits run-throughs without doing damage. The Road Crew ran through the switch to the lead just ahead of Claimant's movement that resulted in Claimant's engine running into the side of the Road Unit's. Another factor was the incompatibility of the radios. The Road Crew used a different channel than the Yard Crew. However, it also developed that the Road Crew was aware of the Yard Crew, but apparently they were less than observant.

Claimant's main error was negligence in not looking ahead, rather than looking back when pulling the cut of cars from the rip.

Discipline is in order and with Claimant's disciplinary record (14 violations in 10 years, 6 of which pertained to train movement), it is understandable why Claimant was dismissed.

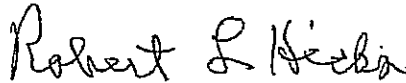
But again, taking into consideration the entire scenario, this Board believes Claimant is to be given one last chance to regain his seniority rights. The dismissal is reduced to a long suspension, but to retain that seniority he must partake in a remedial training course, the duration of which is left to the Carrier before he can solo.

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


Merle W. Galger, For the Employees


George Lief, For the Carrier

Dated: March 8, 2006

