

PUBLIC LAW BOARD NO. 6884

**Award No.
Case No. 32**

PARTIES TO DISPUTE:

**(Brotherhood of Locomotive Engineers
(Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

Claim of Engineer Timothy Y. Miles for reinstatement with pay for all time lost, all seniority rights unimpaired, all vacation rights restored unimpaired, and any and all notations regards to this incident be removed from his personal work record.

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, an Engineer on train MSHMX running from Shreveport, LA, to Beaumont, TX, at about 0430 hours said he felt a slight discomfort on his right thigh described later like a little stick or pin prick.

Some time in the morning of November 4, 2005, Claimant called a Manager in the Human Relations Department who handles most all injuries. Claimant, at that time, relayed to the Human Relations Manager that he thought the current incident was a reoccurrence of a previous injury of a spider bite. The Human Relations Manager urged Claimant to see the company doctor. Claimant saw the company doctor on November 7 who informed him it was a fresh bite, not a flare-up of the old bite.

When Claimant reported to the Human Relations Manager the doctor's diagnosis,

Claimant was instructed to report this immediately to his Supervisor on November 7, 2005.

As a result of not reporting this injury promptly to his Supervisor, an investigation was scheduled for Claimant:

"...In connection with an incident that occurred on November 4, 2005, at approximately 4:30 a.m. It is alleged that while you were serving as a crewmember of the Train MSHMX, you failed to properly report an alleged personal injury, failed to notify the proper authorities of an unsafe condition and made false statements concerning said alleged personal injury. This incident occurred in Many, LA at or near Milepost 634."

On December 16, 2005, Claimant was advised he was dismissed from all service with the Carrier.

The Board supports the Carrier's right to discipline. Claimant should have reported the bite while at the away from home terminal when he first noticed the swelling. If it did turn out to be a flare-up of a previously reported injury, the report would just be added to the file, but if it was a new bite (and it was) he would have been protected. Secondly, he should have reported the bite to his immediate Supervisor and told them he could not find an injury report form.

To this Board, the discipline of dismissal for late filing of an injury is a major violation. It is not unusual for an individual to be dismissed for filing a late injury report, but there exists several mitigating circumstances that lead this Board to convert the dismissal to a long suspension. Claimant is to be returned to service 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 Lelf, For the Carrier

Dated: *September 7, 2006*

