

PUBLIC LAW BOARD NO. 6884

Award No.  
Case No. 36

PARTIES TO DISPUTE:

(Brotherhood of Locomotive Engineers

(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

Claim of Engineer M. A. Dunigan 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.

On February 15, 2006, Claimant was called to operate train HSKC-11 from Heavener, Oklahoma to Pittsburg, Kansas. During the trip, they were required to set out eight cars at a siding at Marble City. The eight cars were behind 15 so they had to pull 23 cars, shove eight on the team track, and return to their train with the remaining cars.

Prior to making the move, the train pulled into a siding to let another train pass. The switches to the siding were controlled by the Dispatcher. To make the set out after the train passed, they were required to enter the main line. They received the Dispatcher's OK and he lined the switch for them. The crew then shoved the cars onto the team track and in doing so did not clear the switch. Claimant thought he was still in the circuit and did not have to contact the Dispatcher to have the switch lined back.

When pulling forward, he ran through the switch damaging same.

As a result of this run through switch, the Carrier notified Claimant and the other crewmembers that an investigation was scheduled:

"...to ascertain the facts and determine your responsibility, if any, in connection with an incident that occurred on February 15, 2006, at approximately 6:35 p.m. It is alleged that while serving as a crewmember of Train HSKC-11, you failed to perform your duties in a safe and proper manner wherein you made an unauthorized movement, resulting in your train running through a main track power switch, which caused damage to the switch. This incident occurred in Marble City, OK, at or near Milepost 281."

Following the investigation, Claimant was advised he was dismissed from Carrier's services.

Claimant admitted to the run through the switch. Following is an excerpt from the investigation. The questions are from the Interrogating Officer; the responses were from a Carrier witness.

"Q: Did you take any written statement?

A: Yes.

Q: Do you have those with you today?

A: Yes I do.

Q: This first one appears to be from Mr. Dunigan could you read it into the record?

A: We was making a set out at Marble City pulled out north end on clear block, shoved back into team track. When I stopped so they could make a cut on the cars to be set out I thought I was still in the circuit. So, I went ahead, I as looking for hand signals when I heard the switch pop so, I stopped and looked at the switch realized I run through the switch."

An admission of the error by the Claimant's written note is sufficient evidence to establish Claimant's culpability for the charges assessed. Dismissal could readily be

defended when reviewing Claimant's record. He has seven brushes with the disciplinary process dating back to March 7, 2003, but of those seven, only three relate to Operating Rule violations.

Claimant in this instance thought he was doing things right only to find he was in error. Under the circumstances, Claimant will be reinstated to service without 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.

  
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Robert L. Hicks, Chairman & Neutral Member

  
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Merle W. Gelger, For the Employees

  
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George Leif, For the Carrier

Dated: *September 7, 2006*

