

**PUBLIC LAW BOARD NO. 6907**

**Award No.  
Case No. 11**

**(Kansas City Southern Railroad**

**PARTIES TO DISPUTE:**

**(Brotherhood of Locomotive Engineers & Trainmen**

**STATEMENT OF CLAIM:**

**Claim of Engineer Bobby B. Rivers for removal of 5-day actual and 25-day record suspension and pay for all time lost in connection with an investigation held in Shreveport, LA, on October 8, 2004.**

**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 was the Engineer running Shreveport to Vicksburg. At Shreveport, at the point the crew took charge of their train, there are two tracks identified as Hollywood #1 and Hollywood #2. There exist crossovers permitting a unit to move from track 1 to track 2 or vice versa. The switches are known as dual controlled switches which means they can be operated by the Dispatcher or they can be taken off power and hand thrown. Once hand thrown, the power returns to the switch after one engine or car moves through the hand thrown switch.**

**In approaching the crossover, the Dispatcher got a blinking light on his board indicating a switch was not responding properly. In this case a switch, one of four, could not be locked in place.**

The Dispatcher gave the crew permission to move against a redboard indicating the switch was to be hand thrown and its power returned after the engine ran over the switch.

What happened thereafter is a classic case of a responsible employee assuming facts not in evidence. The Conductor, in conversation with the Dispatcher, assumed it was the switch in the immediate front which was lined for a straight-ahead movement. The Dispatcher thought the Conductor was talking about the switch that was malfunctioning. Neither the Dispatcher who should have been in control of the movement identified the switch, nor did the Crew Foreman request specific information as to which switch was not working properly.

This is clearly established in the investigation. The Dispatcher who, to reiterate, should have been in control of the situation was rather nonchalant about his part in this incident. He did not identify the switch, nor did he track the engine while it was moving through the switches.

Secondly, the Employees involved argue about the Rule, which refers only to a switch whereas the company witness argued the switch reference was and is intended to include all the switches in the dual controlled territory.

From the Board's viewpoint, this confusion about a singular switch or more than one switch should be clarified to eliminate any future misunderstandings.

Regardless of the Employees' on-property arguments claiming the Carrier made the Engineer a scapegoat, it is fact that neither the Conductor nor the Dispatcher was driving the train. That responsibility falls squarely on the shoulders of the Claimant. When in territory as here concerned, with a malfunctioning switch or switches, the train is to operate at a speed permitting stopping within one half of the distance of the

When in territory as here concerned, with a malfunctioning switch or switches, the train is to operate at a speed permitting stopping within one half of the distance of the obstruction. Claimant was in violation of this Rule. No one at the investigation asked Claimant about visibility when in fact the Dispatcher and the Conductor were asked about visibility. The Conductor said he could not see the switch. The Train Dispatcher who worked as a Conductor some seven years prior to becoming a Dispatcher stated, without challenge, that with the headlight on you should see all switches. But even if you could not see all switches, if you were moving at restricted speed the switch should have been visible if Claimant was observant.

The Carrier has established the bona fide of the charges, so this Board next turns to the discipline imposed; an actual 5-day suspension and 25-day book suspension, which means Claimant will not have to serve any part of the 25 days.

The disparity in assessing discipline for individuals involved in the same incident is an argument that has been advanced in a number of Awards. Depending upon the circumstances, the disparity has been upheld. Discipline is based upon the seriousness of the charges and the employee's responsibility for the incident, plus the Claimant's disciplinary record, which in this incident is clear, as nothing has been brought to this Board's attention. Was Claimant responsible? The answer has to be yes. He was not traveling at restricted speed as he was not paying attention to trackage, nor did he question the Conductor about the vagueness of the Dispatcher's instructions.

There was no dollar estimate of the damage to the switch although the adjective used was extensive, but that would have and does have different meanings to different people.

discipline. The discipline will be reduced to a formal reprimand as he and no one else was driving the train thus some discipline assessment is warranted. Claimant is to be paid the wages he lost for the five days he was suspended.

AWARD

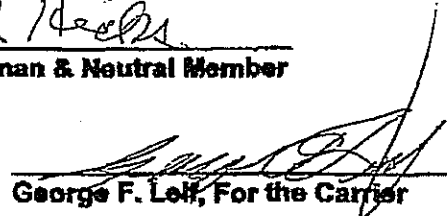
Claim sustained in accordance with the Findings.

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 Gelger, For the Employees

  
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George F. Loh, For the Carrier

Dated: *March 8, 2006*