

**PUBLIC LAW BOARD NO. 6649**

**Award No.  
Case No. 23**

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

**STATEMENT OF CLAIM:**

**Claim of Engineer Brett J. Berry for reinstatement to service and pay for all time lost in connection with an investigation held November 22, 2006 at Pittsburg, Kansas.**

**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 November 17, 2006, Claimant was suspended from service pending the outcome of an investigation to be held November 22, 2006. Following that investigation, Claimant was dismissed from service, but the on-property handling finds the dismissal was reduced to a suspension wherein shortly after February 21, 2007, Claimant resumed his seniority status and commenced working. The reinstatement understanding permitted Claimant to pursue his lost wages in accordance with Section 3 of the Railway Labor Act.**

**The incident giving rise to this case was the movement of the train over a crossing where allegedly no crewmember flagged the crossing as required by the Rules.**

Following is a pertinent part of the charges assessed Claimant in a letter dated November 18, 2006:

**"...to ascertain the facts and determine your responsibility, if any, in connection with an incident that occurred on November 17, 2006, at approximately 5:00 p.m. It is alleged that while serving as a crew member of Train #KCSH, you failed to properly perform your duties wherein you allowed your train to occupy and proceed through a road crossing located at or near Milepost 48.1, Drexel, MO, without providing proper flag protection as required by the provisions of the Track Bulletin in effect at the time.**

The warning gates at a public road crossing malfunctioned. They were down and stayed that way until the repairs could be made.

The crew was properly informed of the situation. Under these circumstances, when the crossing gates malfunctioned a train must stop short of the crossing and put one crew member on the ground to flag the crossing. This did not happen.

When Claimant was questioned concerning this incident, he replied in pertinent part as follows:

**"A: Yes, we cleared our Track Bulletins at Kansas City. I first had the wrong Track Bulletin, the dispatcher told me to get a new Track Bulletin before I left, then I cleared that one specifically with him, which was at 70...Track Bulletin 78 and cleared it with him, got permission to depart Kansas City and received DTC at Blue Valley on a signal indication, proceeded south, we ran into signal problems at Grandview pulling down to Jaudon, got a clear block from there and was going south and come out of the slow order at 40.7, at that time I heard somebody talking to a train at Drexel, we didn't know we was meeting one there at that time, we got up there at...45...I started hollering at him, we come over the hill, had a clear block, we...he told me clear block, I verified it and hollered it over the radio as required, come around there and the gates and the flashers were working, blew the crossing, come on up the hill and that's when the dispatcher hollered, I don't know if he hollered, I can't remember if he hollered at the train or the signal maintainer at the crossing and that's when I realized that we had blown the crossing."**

As often stated, the burden of proof in discipline hearings rests on the shoulders of the Carrier. To this Board, there is no better evidence than an admittance of Claimant that "we had blown the crossing." It was a candid response, but nevertheless they did violate the Rule and Operating Rule violations are serious as each Rule is for the safety of the one who violates same.

Claimant was out of service from November 17, 2006, until sometime in the later part of February. He had a clean record, thus this Board believes the discipline should have been no more than the 30-day suspension. Claimant is to be paid all time lost subsequent to December 17, 2006.

**AWARD**

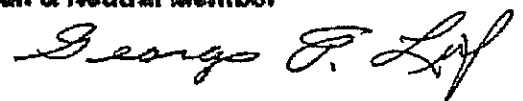
Claim sustained in accordance with the Findings.

**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: July 11, 2007

