

PUBLIC LAW BOARD NO. 6549

**Award No.
Case No. 26**

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

STATEMENT OF CLAIM:

Claim of Engineer Mark D. DeGraff for pay for the removal of the discipline assessed from his file and paid for all time lost in connection with an investigation held on December 28, 2005 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.

An FRA Inspector was at a crossing accompanied by a Signal Maintainer. Claimant's train followed the Rule about whistle time during the crossing and did ring the bell.

Claimant stopped blowing the whistle short of the FRA's position. According to the Inspector, the whistle should have continued blowing until it was even with or a little past the Signalman and the FRA Inspector.

Following an investigation, Claimant was assessed a 5-day actual suspension and a 25-day deferred suspension (which he was not required to serve).

The FRA official was not at the investigation, but the Signalman standing close to

the FRA Inspector was and he testified the whistle was blown as prescribed by the Rule.

That Rule reads as follows:

**"(11) - o - Approaching public crossing at grade with engine in front, start signal not less than ¼ mile before reaching crossing if distance permits. If distance does not permit, start signal soon enough before the crossing to provide warning.
Prolong or repeat signal until engine occupies the crossing.**

**However, whistle warning is not required when crossing is equipped with an Automated Horn System and visual indicator indicates system is operating. Whistle warning is required if visual distance indicates system is not operating or an emergency exists.
Use this signal to warn employees when:**

- Approaching men or equipment on or near the track, regardless of any whistle prohibitions. (sic)."**

The FRA Inspector did not write the violation up other than to report it.

This Board is not an expert on the Rules. It can only read the Rule, listen to testimony of the Signaller who was standing next to the FRA Inspector, who stated the whistle was blown and he acknowledged it when the engine passed him and the FRA Inspector. That part of the Rule reading, "Approaching men or equipment on or near the track, regardless of any whistle prohibitions," appears to this Neutral as being satisfied when the employees warned by train whistle acknowledges the warning, as the Signaller did. If there is more to this Rule than that quoted above, it was not part of the file. Perhaps the Inspector would have been able to furnish recent interpretations of this Rule, but again, he was not in attendance.

This Board finds the Carrier failed to furnish sufficient evidence of Claimant's culpability for the charges assessed.

The claim will be sustained. Claimant's record is to be cleared of this incident

and he is to be paid for all time lost.

AWARD

Claim sustained.

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. Geiger, For the Employees



George Leif, For the Carrier

Dated: JULY 11, 2007

