

**PUBLIC LAW BOARD NO. 6884**

**Award No.  
Case No. 27**

**PARTIES TO DISPUTE:**

**(Brotherhood of Locomotive Engineers**

**(Kansas City Southern Railway Company**

**STATEMENT OF CLAIM:**

**Claim of Engineer Bobby L. Sanders for removal of 19 days actual and 11 days record suspension from his personal record, pay for all time lost, with all seniority rights, fringe benefits and vacation rights restored unimpaired.**

**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 on a yard assignment that was assigned to retrieve a train that died under the Hours of Service Rule. Although the train was only a short distance from the yards, because of the necessity to move from one authority to another and then again to a third authority, moving the dead train was not a simple matter of coupling up, loosing up some handset brakes and moving that short distance.**

**It was necessary to get authority to move onto a Union Pacific track a very short stretch of track, but a very busy track.**

**Upon arriving at the dead train, the contact was made with the Yardmaster who would state the route to follow to get to the yards, but the Yardmaster told the crew to sit tight as he had no room.**

**Two officials knew about the yard crew's assignment, checked with a Dispatcher**

who advised he heard nothing from them, so they went to check. They observed one crewmember reclined in a position indicative of slumber and another reading a magazine. After the officials boarded the engine, Claimant and the trainee appeared, having gone to a convenience store located conveniently near the train the crew was to move.

Testimony developed that it was an extremely hot day and the cab of the engine of the dead train was shut tight (or it should have been), but heat built up inside the cab which was estimated to be about 120 degrees. As stated, the testimony was strictly a guess but everyone knew how hot a car interior gets when all the windows and doors are closed.

There was no ice water on the unit of the dead train, thus Claimant and the trainee with the permission of the Conductor went to secure some cold drinks.

Claimant did not, nor did the trainee, wear improper shoes. Neither was reading unapproved material nor sleeping on duty, but they did leave the train. They did not abandon their assignment. They had permission from the crew leader but without the authority of anyone else.

In this Board's opinion, the Carrier who has the responsibility to come forth with sufficient evidence failed. The claim will be sustained.

**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*

Robert L. Hicks, Chairman & Neutral Member

*Merle W. Gelger*

Merle W. Gelger, For the Employees

*George F. Leif*

George Leif, For the Carrier

Dated: 10/20/06

