

PUBLIC LAW BOARD NO. 6884

Award No.
Case No. 3

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

STATEMENT OF CLAIM:

Claim of Engineer Dennis Mitchell for return to service with seniority unimpaired, all benefits restored, and pay for all lost wages.

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.

The Carrier on January 13, 2005, notified Claimant of an investigation to determine his responsibility:

"...in connection with allegedly permitting your train to run through the Copoly Switch in Baton Rouge yard resulting in track damage. This incident occurred at approximately 1750 hours on January 11, 2005, while serving as crewmembers of the YBR-210."

There exists no controversy concerning the incident. Claimant readily acknowledged he ran through the switch with the engine unit and five cars.

Claimant's position was that to talk on the radio, he had to take his eyes off looking north to face east. He never noticed the misaligned switch until it was too late to do anything other than continue the run through. Claimant further stated this was only his second trip on this line and the crew were novices also.

Other than the way it occurred, there exists no evidence that would in any way

counter the basic fact that Claimant was negligent. The Carrier readily believed that they had sufficient evidence of Claimant's culpability for the charges assessed. When reviewing Claimant's record, the Board notes this is the ninth time he has been a principle at an investigation. Eight of the nine incidents were train operating indiscretions, including three instances of running through switches.

When coupling Claimant's record with the incident here concerned, the Carrier is not out of line in dismissing Claimant, but this Board believes the Claimant should have one last chance to resume his career with the Carrier. He is to be reinstated to service without any pay for time lost. The Carrier has a remedial course set up. Claimant must partake in the remedial training for a period of time as determined by the Carrier before resuming service.

This is undoubtedly Claimant's last chance to resume his career with the Carrier.

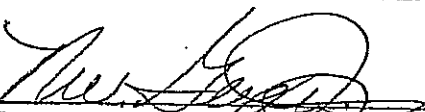
AWARD


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.


Robert L. Hicks, Chairman & Neutral Member


Merle W. Gelger, For the Employees


Kathleen Alexander, For the Carrier

Dated: 11/15/05