

PUBLIC LAW BOARD NO. 6884

Award No.
Case No. 33

PARTIES TO DISPUTE:

(Brotherhood of Locomotive Engineers
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

Claim of Engineer Trainee Shannon Gordon for reinstatement with pay for all time lost, all seniority rights unimpaired, all vacation rights restored unimpaired, and any and all notations regards to this incident be removed from his personal work record.

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 an Engineer Trainee. He completed, successfully, all his classes and was out on the road to learn the territory. As an Engineer Trainee, he was guaranteed six days work and one day of rest. An official of the Carrier tracks the trainees and assigns them to work with an Engineer. The official who assigns the trainees, boarded the engine Claimant was training with and instructed Claimant to work one more trip with the Engineer he currently was with then change to another assignment.

Claimant was called at 2333 hours on December 31 to work with a new Engineer but he did not respond. About 0630 AM on January 1, he contacted crew management who informed him he had missed a call.

On January 4, 2006, the Carrier wrote that an investigation was being established:

"...to ascertain the facts and determine your alleged responsibility, if any, in connection with an incident that occurred on December 31, 2005, at approximately 11:33 p.m. It is alleged that you failed to be available for call and took unauthorized time off. This incident occurred in Shreveport, LA., at or near Milepost 554."

On January 23, 2006, the Carrier wrote Claimant to advise him as follows:

"After careful and thorough review of the transcript of this investigation, it has been determined that you have violated Kansas City Southern Railway's General Code of Operating Rule 1.16-Subject to Call.

Accordingly, for your violation of the above mentioned rule and in considering your prior discipline history, you are hereby dismissed from the services of Kansas City Southern Railway effective immediately, January 24, 2006."

Claimant's defense was that December 31, 2005, was a rest day pursuant to the trainee's schedule. If the assignment the trainee is assigned to train with is off due to the holiday or whatever unless otherwise instructed, the trainee can lay in with the assignment and may claim time. Thus, Claimant laid in the 25th, 26th, & 27th and was paid time for 2 of the 3 days.

What occurred here was a misunderstanding between the Training Officer and the Claimant. Claimant thought he was still with the same Engineer he worked with on the 29th & 30th of December. He must have thought that if the Engineer didn't work on the 31st, he could lay in, then again he told crew management that the 31st was his rest day.

The bottom line is that Claimant was to work with a different Engineer but missed the call. Claimant stated he had to be off December 31, 2005, to clear up some estate matters and the 31st was the last day they had to file.

Perhaps had Claimant explained this to crew management and/or the Carrier official handling trainee assignments, they just may have let him off, but he did not.

There are two sides to this issue; Claimant's and the Training Officer's. The Carrier has accepted their witness's handling of the matter. The Board does support the Carrier in this instance.

Regarding the discipline imposed, dismissal, the Board when reviewing Claimant's disciplinary record finds there is grounds therefore, but this Board believes Claimant's dismissal is to be converted to a long suspension. Claimant is returned to service with all his seniority unimpaired but with no pay for time lost. This Board does caution Claimant to obey the Rules or the next disciplinary action may very well be Claimant's last.

AWARD

Claim partially 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


George Leff, For the Carrier

Dated: *September 7, 2006*

