

**PUBLIC LAW BOARD NO. 8884**

**Award No.  
Case No. 34**

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

**STATEMENT OF CLAIM:**

**Claim of Engineer Joshua A. Hall 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.**

**On October 20, 2005, Claimant was called to work train H-SHKS-20 from Shreveport to DeQueen, Arkansas. On the way out of the yards he ran through a switch.**

**The Carrier wrote Claimant on October 22, 2005, advising an investigation was being established:**

**"...in connection with an incident that occurred on October 20, 2005, at approximately 7:40 a.m. It is alleged that while serving as crewmembers of Train HSHKC, you allowed your train to run through a switch. This alleged incident occurred at the Shreveport Terminal at or near Milepost 055.4."**

**The investigation testimony states that the groundman on Claimant's train told him they had one more switch to get in order to clear the yards. Claimant acknowledged the groundman's warning. The groundman, however, had to visit the welfare facilities. The door in the first unit leading to the facility was jammed so he went to the second unit.**

Claimant saw the switch was not lined for his movement, but he thought it was a spring switch that would return to the way it was before the run through.

Claimant admitted in writing, "I went through the tail trk switch. I thought it was a spring switch." The Carrier dismissed Claimant from its services with a letter dated January 6, 2006.

With Claimant's admission that he did run through the switch, the Carrier's burden of furnishing sufficient evidence of its charges was satisfied. The only matter before this Board is the dismissal of Claimant.

A review of Claimant's disciplinary record finds only two entries going back three years (passing a blue flag and failing to stop at a dark signal). He was suspended for five days for passing the blue flag, and for not stopping at a dark signal he was dismissed originally but then it was reduced to a 30-day suspension.

Both are serious violations that could have led to serious injury to the parties and damage to the equipment.

Under the circumstances, the Board will change the dismissal to a long suspension. Claimant is to be returned to service but without any pay for time lost. If the Carrier believes some remedial training would be of benefit to Claimant, then the Board will support that action.

Any objections raised to the proceedings not directly referred to does reflect the Board's opinion that they are insignificant to the case.

**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  
Robert L. Hicks, Chairman & Neutral Member

Marie W. Geiger  
Marie W. Geiger, For the Employees

George E. Leif  
George Leif, For the Carrier

Dated: 10/20/06

