

PUBLIC LAW BOARD NO. 6884

Award No.
Case No. 4

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

STATEMENT OF CLAIM:

Claim of Engineer Brad L. Barrett 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.

Claimant on September 21, 2004, was the Engineer on a unit coal train consisting of 125 loads, 7000 feet in length and weighing 17,877 tons. The territory Claimant was to travel included a grade of 1.5%

The Carrier has issued instructions of train handling over this particular section.

Such instructions were contained in a Trainmaster's circular issued February 7, 2003, which reads as follows:

"Instructions for ALL distributive power trains operating on Gravetta Hill.

At Main Street, MP #209.84, reduce throttle from Throttle # 8 to Throttle # 7 on the head end.

At West Team Track switch, MP #209.91, reduce the throttle from Throttle # 7 to Throttle # 6 on the head end.

At MP #210 reduce throttle from Throttle # 6 to Throttle # 5 on the head end.

At East Team Track Switch, MP #210.07, reduce throttle from Throttle # 5 to Throttle # 4 on the head end.

While the above is being done the remote locomotives will be in Throttle # 8. This is done by splitting the DP screen on the head end.

After this, be governed by ABTH Rule 104.12.5.D, Page 146, which states:

- 1.) Reduce the throttle before the locomotive crests the grade.
- 2.) Continue to reduce the throttle to keep the speed from increasing until at least half the train has crested the grade."

After about 88% of the train had passed the crest of the grade, a knuckle gave way separating the last 15 cars from the main body of the train.

As is customary, an inspection occurred to determine the cause thereof. The speed tapes from the lead unit and from the pusher units (which were also controlled by Claimant) were printed out.

The tapes reveal after reaching the crest and starting the downhill side to 3500 feet further (3500 feet is the halfway point of the train), the train went from 12 mph at the crest to 22 mph.

It is to be noted this train handling was not in accordance with the Trainmaster's instructions. At the halfway point, the train speed should be equal to the speed at the crest of the hill.

Claimant's representative argued Circular No. 3 was abolished effective July 1, 2004, wherein a system circular was issued abolishing all KCS circulars dated and issued prior to July 1, 2004. However, Carrier argues the Trainmaster Circular No. 3 was not a system's bulletin. The Carrier also argues that notwithstanding the Organization's argument relative to the validity of the Circular, Rule 104.12.5 D which reads as follows:

- "1.) REDUCE THE THROTTLE BEFORE THE LOCOMOTIVE CRESTS THE GRADE.
- 2.) CONTINUE TO REDUCE THE THROTTLE TO KEEP THE SPEED FROM INCREASING UNTIL AT LEAST HALF THE TRAIN HAS CRESTED THE GRADE."

was violated.

The Carrier has satisfied its obligation to furnish sufficient evidence of Claimant's culpability for the charges assessed, thus the only matter for this Board is the discipline of record of Claimant, which is as follows:

- "06-12-97 Reprimand - failure to stop short of switch
- 08-09-01 Reprimand - blocked road crossing for 43 minutes
- 04-09-03 45 days actual and 120 days deferred suspension - failure to inspect train
- 04-21-03 Reprimand - improper train handling
- 07-08-04 30 days actual suspension - failure to control train"

It is evident that Claimant has been experiencing some train handling problems, but they are not serious enough to sustain a permanent dismissal. Perhaps five days of remedial training would be of benefit to Claimant and thus to the Carrier. In any event, Claimant is returned to service without any pay for time lost.

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

Merle W. Geiger

Merle W. Geiger, For the Employees

Kathleen Alexander

Kathleen Alexander, For the Carrier

Dated:

9/29/05

