

PUBLIC LAW BOARD NO. 6884

Award No.  
Case No. 6

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

STATEMENT OF CLAIM:

Claim of Engineer Randy Davis for reinstatement to service, removal of the dismissal from his personal record, and pay for all time lost.

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 January 8, 2004, was first out on the extra board. He stood for a 0730 yard assignment. He was called by the crew caller at 0628 and again at 0630. Someone answered finally and stated Claimant was not there.

Claimant did contact the caller and later was advised that he missed a call, about which the caller could do nothing, but did mark Claimant back up for work.

The caller, in addition to calling Claimant's primary number, also tried his cell phone, again without success.

Claimant contended his cell phone did not ring, but the caller stated Claimant was called at various numbers, all without success. The extra calls to phone numbers other than to his primary phone is done more as a courtesy rather than a rule necessity.

There is no question about Claimant being in violation of Rule 1.18, which reads:

"Employees subject to call must indicate where they can be reached and must not be absent from their calling place without notifying those required to call them."

Claimant was timely advised of the Carrier's decision to dismiss him from service.

Claimant's disciplinary record reads as follows:

05-16-98	Reprimand - failure to be available
05-13-98	15 days deferred suspension - failure to be available
11-28-02	5 days record suspension - failure to be available
01-18-03	15 days record suspension - failure to be available
04-27-03	30 days actual suspension - failure to be available

There are five entries for the same offense - missing calls. There is sufficient evidence brought forth by the Carrier that clearly establishes Claimant's culpability for the charges assessed. The discipline of dismissal could be readily supported, but it is noted that although he may have trouble being available for service, he has had no problems regarding train operations and he has the apparent skill to be, and probably is, a good engineer.

Under these circumstances, the Board will convert the dismissal to a long suspension and return him to service, but without any pay for the time lost.


AWARD

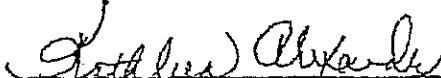
Claim sustained in accordance with the Findings.

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, Chairman & Neutral Member

  
Marie W. Gelger, For the Employees

  
Kathleen Alexander, For the Carrier

Dated: 9/29/05

