

PUBLIC LAW BOARD NO. 6907

**Award No.
Case No. 2**

PARTIES TO DISPUTE:

(Kansas City Southern Railroad
(Brotherhood of Locomotive Engineers & Trainmen

STATEMENT OF CLAIM:

Claim of Engineer Victor C. Sirna for removal of 10-day suspension and pay for all time lost in connection with an investigation held in Kansas City, MO, on January 7, 2004.

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 had timely requested a personal leave day and it was granted. He called the crew caller to make sure he was marked off for the personal day, but he was informed that no one was available on the Board to work his vacancy and he had to report and protect his assignment.

Claimant, through his local representative, tried to persuade the Carrier that the only one who could cancel the personal leave day was the Local Chairman as provided for in the Agreement regardless of the circumstances.

The Agreement language does so provide, but one other factor must be considered and that is the train service. First and foremost, a qualified rested employee must protect the service he stands for if there is no one else available.

The record is inconclusive as to whether Claimant was called for the service, but refused to go. He was advised that it was expected he would work, but no record exists showing he was called at 1715 for the 2015 reporting time. Claimant did, however, make it clear that he had arrangements made to visit his aunt in a rest home and that was his intent.

Claimant did not protect the service, but the Carrier experienced no train delay when an Extra Board Engineer accepted less than a three hour call and protected the work.

This whole dispute could readily have been avoided with a little more effort by the Carrier working with the Local Chairman. If the Carrier's actions were at odds with the Rules, even if they were dead wrong, there is a position previous neutrals have taken and this is "obey now and grieve later."

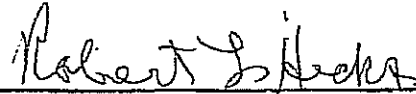
Under the circumstances, Claimant did not directly refuse to work his turn, nor did he miss the call because Carrier never called him at call time, but he did not work his assignment. The penalty of a 10-day suspension is too harsh thus the Board reduces the discipline to a formal reprimand. He is to be paid the 10 days he lost.

AWARD

Claim sustained as provided in the Findings.

ORDER

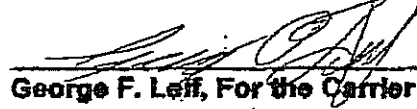
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member



Merio Geiger, For the Employees



George F. Leif, For the Carrier

Dated: MARCH 8, 2006

