

PUBLIC LAW BOARD NO. 6907

Award No.  
Case No. 4

(Kansas City Southern Railroad  
PARTIES TO DISPUTE:  
(Brotherhood of Locomotive Engineers & Trainmen

STATEMENT OF CLAIM:

Claim of Engineer T. O. Smith for removal of 45-day suspension and pay for all time lost in connection with an investigation held in Shreveport, LA, on November 12, 2003.

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.

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Claimant was in pool service, running Jackson to Shreveport. He was instructed to leave his train within the Shreveport terminal limits. He did as instructed, but failed to leave the train as provided for in Rule 102.13C, which reads:

**"Apply all Locomotive Hand Brakes**

**Apply all hand brakes when locomotives are left outside terminals, attached or unattached to a train."**

And Rule 102.27.4, which reads:

**"When securing a train or portion of a train with locomotive(s) attached, perform the steps below. In addition, perform item 1-4 as outlined in ABTH Rule 102.13.2 in order to further secure the controlling locomotive:**

- 1 Fully apply the independent brake.**
- 2 Make a 20-psi brake pipe reduction.**

- 3 Apply a sufficient number of hand brakes. (Refer to ABTH Table (01.27.6)
- 4 Increase the brake pipe reduction to 40 psi and leave the automatic brake cut in."

Two Carrier officers were conducting efficiency tests in the Shreveport area.

Two hours or so after Claimant left the train, the two officers came upon the abandoned train and conducted an examination to determine if the train was left standing in accordance with the aforementioned two Rules.

They discovered no handbrakes were set on the locomotive, the psi on the braking system was not set as required by the Rules, nor was there a briefing card left for the succeeding Engineer.

An investigation was scheduled following which the Carrier assessed Claimant a 45-day suspension.

Claimant admitted he did not leave a briefing card, but argued he did set one hand brake on the engine. Claimant also contended he reduced the air about 30 pounds. Claimant believed he was leaving the train within terminal limits whereas the Carrier contends the train was left in the area considered within the terminal boundaries but not within the yard proper. If Claimant left the train in the yards in the condition he left it in the terminal, perhaps he would be correct.

It is suggested that such boundaries be clearly defined.

During the property handling, Claimant's Representative raised an objection to the investigation contending the Conductor had an equal responsibility to see that the train left standing had been handled pursuant to the Rules.

Many discipline cases have held as the Neutral did in First Division Case 19394, wherein it was held:

"In assessing discipline imposed as the result of a trial or investigation, the scope of our review is necessarily confined to the transcript or record. (Awards 14319, 15745). The reason behind this principle is that the evidence adduced at the trial or investigation is the sole basis for the discipline imposed."

Then in another First Division Award No. 14729, the Neutral held:

"It is the duty of the Carrier to conduct investigations on the property that will bring out true facts. In order that such an investigation be realized it follows that all witnesses to an incident in question whose testimony can throw light on the matter should be called and compensated by the Carrier according to the terms of the current agreement."

Thus, each case has to be judged on its own.

Ordinarily, this Neutral in most all cases has held that only the material established within the four corners of the transcript can be considered and is the sole basis for a decision. However, such cannot be considered cast in stone. Occasionally, one has to reasonably consider arguments raised outside the transcript.

In this case, the Conductor could have proven to have been a valid witness, either supporting or denying the testimony of the efficiency team and/or the Claimant.

Because the Carrier did not call the Conductor as a witness or even charge him for the same as Claimant, and the confusion between yard limits and terminal limits, the discipline assessed will be reduced to 20 days with Claimant being paid for days lost in excess of 20. This does not include pay for time Claimant may have lost to attend the investigation.

#### 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*

Robert L. Hicks, Chairman & Neutral Member

*Marie Galger*

Marie Galger, For the Employees

*George F. Leif*

George F. Leif, For the Carrier

Dated: 2-9-06