

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS AND TRAINMEN

AWARD NO. 101

CASE NO. 101

TO

FILE: 2019-0105

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY


STATEMENT OF CLAIM: Claim of KCS Engineer Oliver Black for the unwarranted discipline of 30 days suspension of which 5 will be actual suspension from service (February 23, 2019 through February 27, 2019) assessed to Engineer Black. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation restoring him as an active Locomotive Engineer for The Kansas City Southern Railway Company. He is charged with violating the General Code of Operating Rules 5.4.3 - Display of a Yellow-Red Flag and GCOR Rule 5.4.7 - Display of Red Flag and The Kansas City Souther Railway Company's Air Brake Systems and Train Handling Rules and Instructions Rule 109.1 - Engineer Responsibilities and Certification; Engineer and Conductor Responsibilities.

FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

Claimant was employed on November 6, 1989, and subsequently promoted to engineer. On February 22, 2019, Claimant was working as engineer on the M-ARSH-21 out of Artesia, Mississippi. A Carrier supervisor was performing a yellow-red board test at Brandon, Mississippi on the Meridian Subdivision. The Claimant passed the yellow-red board, but did not slow the train to restricted speed as required and passed the red board. As a result, a hearing was held and based on the evidence, Claimant was assessed a thirty day suspension (five actual and twenty five record).

Substantial evidence supports the charges. The Organization argues the test was improper and the camera evidence was not produced at the hearing. We find these objections not fatal to this case and will consider the merits. The crew testified they did not see the yellow-red board at milepost 83.6 and as a result passed the red board at milepost 86.6. Claimant testified he viewed a video showing the yellow-red board and in his closing statement advised this was the first time he missed a yellow-red board. Claimant's crew missed the yellow-red board and passed the red board without authority. The discipline was issued under Carrier's discipline Policy Matrix. The Board finds no basis to overturn the Carrier's decision.

AWARD: Claim denied.

  
David N. Ray, Chairman

  
Jacob McCahill, Carrier Member

  
J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on May 29, 2020.

PUBLIC LAW BOARD 7239

PARTIES      BROTHERHOOD OF LOCOMOTIVE  
                 ENGINEERS AND TRAINMEN  
                 TO  
DISPUTE      KANSAS CITY SOUTHERN RAILWAY COMPANY

AWARD NO. 102  
CASE NO. 102  
FILE: 2019-0086

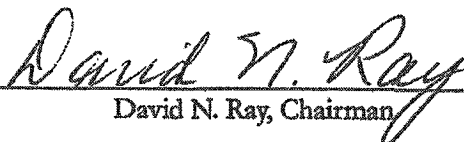
STATEMENT OF CLAIM: Claim of KCS Engineer George Roberts for the unwarranted discipline of 60 days suspension of which 30 was actual suspension from service (February 19, 2019 through March 20, 2019) and Thirty (30) days record Suspension assessed to Engineer Roberts. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation restoring him as an active Locomotive Engineer for The Kansas City Southern Railway Company. He is charged with violating the General Code of Operating Rules 6.31 - Maximum Authorized Speed, GCOR Rule 18.17 - Restrictions and Authorities and The Kansas City Souther Railway Company's Air Brake Systems and Train Handling Rules and Instructions 109.1 - Engineer Responsibilities and Certification; Engineer and Conductor Responsibilities.

FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

Claimant was employed on March 30, 1994, and subsequently promoted to engineer. On February 18, 2019, Claimant was engineer on the MSHAR-17 operating from Jackson, Mississippi to Artesia, Mississippi. An alert indicated the train exceeded the maximum authorized speed of twenty miles per hour from milepost 136.8 to milepost 137.1 near North Meridian. A review of the downloads confirmed the crew violated the speed restrictions. As a result, a hearing was held and based on the evidence, Claimant was assessed a sixty day suspension, of which thirty days were served.

There is substantial evidence to support the charges. We have considered the procedural objections raised by the Organization and find them not to be fatal to the case and will rule on the merits. Claimant's train had a speed restriction of twenty miles per hour between milepost 136.8 to milepost 137.1, even though his on-board monitor indicated the speed restriction was 49 miles per hour. The crew is ultimately responsible for maintaining the correct speed even when the on board technology gives incorrect information. The crew should know and follow maximum authorized speed and permanent speed restrictions. They exceeded the maximum authorized speed by ten miles per hour while the rear of their train was still located in the speed restriction. The discipline was issued under Carrier's discipline Policy Matrix. The Board finds no basis to overturn the Carrier's decision.

AWARD: Claim denied.

  
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David N. Ray, Chairman

  
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Jacob McCahill, Carrier Member

  
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J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on May 29, 2020.

**PUBLIC LAW BOARD 7239**

PARTIES      BROTHERHOOD OF LOCOMOTIVE  
                 ENGINEERS AND TRAINMEN  
                 TO  
DISPUTE      KANSAS CITY SOUTHERN RAILWAY COMPANY

AWARD NO. 103  
CASE NO. 103  
FILE: 2019-0088

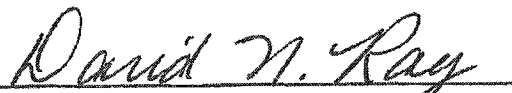
STATEMENT OF CLAIM: Claim of KCS Engineer Jerry Griffin for the unwarranted discipline of 30 days suspension of which 5 will be actual suspension from service (April 8, 2019 through April 12, 2019) and Twenty five (25) days record Suspension assessed to Engineer Griffin. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation restoring him as an active Locomotive Engineer for The Kansas City Southern Railway Company. He is charged with violating the General Code of Operating Rules 6.31 - Maximum Authorized Speed.

FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

Claimant was employed on September 27, 1993, and subsequently promoted to engineer. On February 19, 2019, Claimant was engineer on the MSHAR-18 operating from Jackson, Mississippi to Artesia, Mississippi. An alert indicated the train exceeded the maximum authorized speed of twenty miles per hour between milepost 135.0 and milepost 137.1 near North Meridian. A review of the downloads confirmed the crew violated the speed restrictions. As a result, a hearing was held and based on the evidence, Claimant was assessed a sixty day suspension, of which thirty days were served.

There is substantial evidence to support the charges. The Organization states that the Trip Optimizer function was not upgraded by Information Technology to reflect the changed speed limit at this location and argues this caused the infraction. This has since been corrected. When permitted, Claimant engaged the Trip Optimizer which resulted in taking the train up to track speed. Claimant's train had a speed restriction of twenty miles per hour between milepost 136.8 to milepost 137.1 which was not programmed into the Trip Optimizer. As a result, the crew exceeded the maximum authorized speed by eight miles per hour while the rear of their train was still located in the speed restriction. The crew is ultimately responsible for maintaining the correct speed even when the on board technology gives incorrect information. The record indicates Claimant was encouraged to use the Trip Organizer and complemented for his continued use of this fuel saving tool. Based on the particular facts, the Board will reduce the discipline to a letter of reprimand.

AWARD: Claim sustained, in part, in accordance with Findings.

  
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David N. Ray, Chairman

  
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Jacob McCahill, Carrier Member

  
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J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on May 29, 2020.

**PUBLIC LAW BOARD 7239**

PARTIES BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS AND TRAINMEN  
TO

AWARD NO. 104  
CASE NO. 104  
FILE: 2019-0159

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

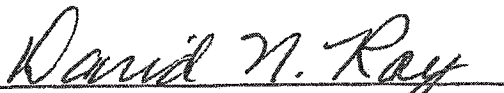
STATEMENT OF CLAIM: Claim of KCS Engineer William Mickler for the unwarranted discipline of 30 days suspension of which 5 will be actual suspension from service (March 17 8, 2019 through March 21, 2019) and Twenty five (25) days record Suspension assessed to Engineer Mickler. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation restoring him as an active Locomotive Engineer for The Kansas City Southern Railway Company. He is charged with violating The Kansas City Southern Railway Company's General Code of Operating Rules 6.32.4 - Clear of Crossings and Signal Circuits and GCOR Rule 15.1 - Track Bulletins and The Kansas City Souther Railway Company's Air Brake Systems and Train Handling Rules and Instructions 109.1 - Engineer Responsibilities and Certification; Engineer and Conductor Responsibilities.

FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.


Claimant was employed on August 30, 1999, and subsequently promoted to engineer. On March 15, 2019, Claimant was engineer on the I-ATDA-15 operating out of Meridian, Louisiana. Claimant's train was given a bulletin to stop and protect a crossing at milepost 111.79 in Simsboro, Louisiana. A review of the downloads confirmed the crew did not protect the crossing as required. As a result, a hearing was held and based on the evidence, Claimant was assessed a thirty day suspension, of which five days were served.

The incident occurred March 15, 2019. The notice of investigation was mailed (postmarked) March 26, 2019, eleven days later and indicated a scheduled delivery date of March 28, 2019. The Collective Bargaining Agreement requires Claimants directed to attend a hearing to be notified within a reasonable period of time but not to exceed ten (10) days from the date of the occurrence. The merits were not considered as the time limits of the agreement were violated.

AWARD: Claim sustained.

  
David N. Ray, Chairman

  
Jacob McCahill, Carrier Member

  
J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on May 29, 2020.

**PUBLIC LAW BOARD 7239**

PARTIES BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS AND TRAINMEN

AWARD NO. 105  
CASE NO. 105  
FILE: 2019-0252

TO

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

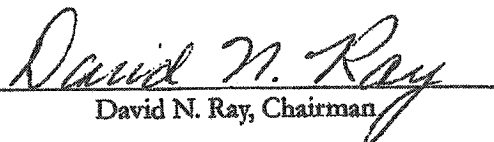
STATEMENT OF CLAIM: Claim of KCS Engineer Stacy Bayless for the unwarranted discipline of 30 days suspension of which 5 will be actual suspension from service (July 1, 2019 through July 5, 2019) and Twenty five (25) days record added to his personnel file. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of The Kansas City Southern Railway Company's Safety Rules, Transportation Department T-4 - Adjusting Mismatched Couplers.

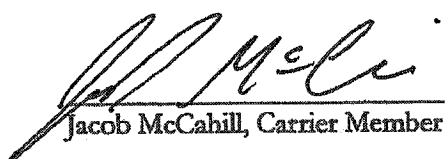
FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

Claimant was employed on July 27, 1994, and subsequently promoted to engineer. On April 30, 2019, Claimant was working as engineer on the GHVJV-29 out of Kansas City, Missouri. A Carrier supervisor took the crew to Blue Valley on the Mexico Subdivision. The crew was loading their things onto locomotive KCS 4034 when the supervisor observed Claimant close the knuckle with his foot while doing an inspection of the engine. As a result, a hearing was held and based on the evidence, Claimant was assessed a thirty day suspension (five actual and twenty five record).

Substantial evidence supports the charges. The Organization argues the rule was not technically violated since there was no mismatched couplers. The Organization also states in view of Claimant's record and tenure, the discipline was excessive. We do not agree. Claimant testified he closed the knuckle with his foot for safety reasons in the same manner as he had been taught. Carrier advised Claimant regarding the rule violation when it was observed and Claimant testified he has not closed a knuckle with his foot since being advised of the rule violation. Claimant may well be a model employee with no intent to violate a safety rule. However, the discipline was issued under Carrier's discipline Policy Matrix. The Board finds no basis to overturn the Carrier's decision.

AWARD: Claim denied.

  
David N. Ray, Chairman

  
Jacob McCahill, Carrier Member

  
J. Alan Holdcraft, Employee Member

**PUBLIC LAW BOARD 7239**

PARTIES      BROTHERHOOD OF LOCOMOTIVE  
                 ENGINEERS AND TRAINMEN  
                 TO  
DISPUTE      KANSAS CITY SOUTHERN RAILWAY COMPANY

AWARD NO. 106  
CASE NO. 106  
FILE: 2019-0313


STATEMENT OF CLAIM: Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Scott Reed immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service. on July 1, 2019. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement Credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for The KCS Railway General Code of Operating Rules 1.6.4 - Notifications of Criminal Charges.

FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

Claimant was employed on August 15, 2005, and subsequently promoted to engineer. Claimant was working as engineer out of Artesia, Mississippi. On June 4, 2019, the Carrier discovered Claimant was arrested for DUI on or around April 25, 2019. As a result a hearing was held, and based on the evidence, Claimant was dismissed.

The evidence developed in the hearing, confirms that Claimant violated Carrier's rules. The Organization argues that discipline was excessive. On June 2, 2019, Claimant advised his Union Representative of his circumstances indicating he believed that a conviction triggered notification requirements under Carrier's rule. Claimant's Local Chairman advised Claimant the rule had been changed and explained the correct requirements under the rule. Claimant then self-reported the incident to the Carrier's Human Resources Department. The record confirms that Claimant was arrested for DUI but failed to comply with the rule requiring employees to notify the Carrier within 48 hours of being charged with certain crimes. Claimant is responsible for knowing and abiding by Carrier's rules. Considering the circumstances in this case, it is the Board's decision that Claimant be returned to work with seniority unimpaired, but without pay for time lost subject to successful completion of Carrier's Employee Assistance Program.

AWARD: Claim sustained, in part, in accordance with Findings.

  
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David N. Ray, Chairman

  
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Jacob McCahill, Carrier Member

  
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J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on May 29, 2020.

**PUBLIC LAW BOARD 7239**

PARTIES      BROTHERHOOD OF LOCOMOTIVE  
                 ENGINEERS AND TRAINMEN  
                 TO

AWARD NO. 107  
CASE NO. 107  
FILE: 2019-0474

DISPUTE      KANSAS CITY SOUTHERN RAILWAY COMPANY

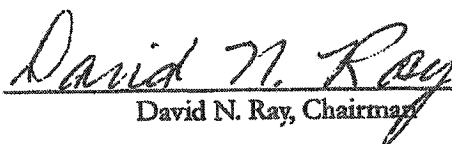
**STATEMENT OF CLAIM:** Appealing the Carrier's unwarranted dismissal from service assessed to Engineer David Hudgens immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service. on August 12, 2019. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement Credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for The KCS Railway for allegedly violating The Kansas City Southern Railway Company's General Code of Operating Rules 1.47 - Duties of Crew Members and The Kansas City Souther Railway Company's Air Brake Systems and Train Handling Rules and Instructions 100.10 - Class I Air Brake Test and Initial Terminal Inspection and ABTH Rule 109.1 - Engineer and Conductor Responsibilities.

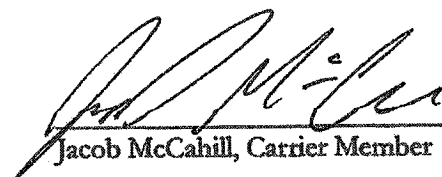
**FINDINGS AND OPINION:** This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

Claimant was employed on December 18, 2006, and subsequently promoted to engineer. On July 30, 2019, Claimant was the engineer on the MKCVN-30 out of Kansas City, Missouri. Two Carrier officers were performing field tests on the Mexico Subdivision and were observing Claimant's crew at Slater, Missouri. Claimant's crew was observed picking up 19 cars at an industry without performing a proper Class I air test. As a result, a hearing was held and based on the evidence, Claimant was dismissed.

Substantial evidence support the charges. The Organization states that Claimant did have an opportunity to complete the test before being stopped by supervision. The Carrier advises Claimant performed an improper test and didn't have an air gauge at the rear of the cut to perform a proper test. The testimony provides substantial evidence that Claimant were performed an improper air test. The testimony alleging that the test was going to be properly performed again before the crew's departure is self serving and not credible. The discipline was issued under Carrier's discipline Policy Matrix. In view of Claimant's record, which contains two previous dismissals, the Board will not alter the Carrier's decision.

AWARD: Claim denied.

  
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David N. Ray, Chairman

  
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Jacob McCahill, Carrier Member

  
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J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on May 29, 2020.