

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE
 ENGINEERS AND TRAINMEN

TO

AWARD NO. 129
CASE NO. 129
FILE: 2020-0517

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of KCS Engineer Shaun Jones for the unwarranted discipline of letter of 1 point under the Availability Policy Train, Engine & Yard Employees. This claim is for removal of all notations of discipline 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 General Code of Operating Rules 1.15 - Duty - Reporting or Absence.

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.

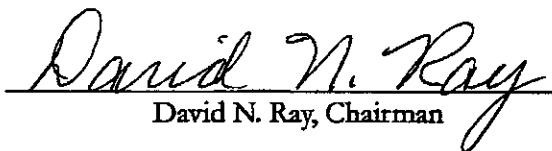
Claimant was employed on February 26, 2001, and subsequently promoted to engineer. On August 3, 2020, Claimant was called as the Engineer on L-AR201-03 with a starting time of 10:00 a.m. out of Artesia, Mississippi. Claimant was not able to respond to the call. As a result, a hearing was scheduled and based on the evidence, Claimant was assessed one point for the missed call.

The Organization states that Claimant tried to mark off but had trouble contacting crew management. On the morning of August 3, 2020, Claimant asked for assistance from his supervisor in marking off for a personal leave day to attend a funeral. At 7:00 a.m., the supervisor advised crew management to contact Claimant. Crew management did not contact Claimant before he departed for the funeral where he was to be a pall bearer. As a result, Claimant missed a call. In view of the particular circumstances and Claimant's record, the Board will remove the discipline from Claimant's record, but deny any pay for time lost.

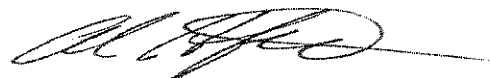
AWARD: Claim sustained, in part, in accordance with Findings.



Jacob McCahill, Carrier Member



David N. Ray, Chairman



J. Alan Holdcraft, Employee Member

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE
 ENGINEERS AND TRAINMEN

TO

AWARD NO. 130
CASE NO. 130
FILE: 2020-135-01

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of KCS Engineer Mitchell Rupard for the unwarranted discipline of 30 days suspension of which 5 was actual suspension from service (October 26, 2020 through October 30, 2020) and twenty five (25) days record suspension 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 General Air Brake Systems and Train Handling Rules and Instructions 101.14 - Securing Equipment.

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 15, 1996, and subsequently promoted to engineer. On September 18, 2020, Claimant was engineer on the LSR101-18, a local out of Slater, Missouri. Carrier supervisors at Odessa, Missouri observed the crew pull into Odessa and pick up power. A supervisor pulled the DVR and event recorder and found that Claimant failed to perform a proper securement test. The video revealed Claimant mounted a separate locomotive leaving two locomotives unattended on the main line. 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.

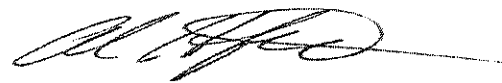
The evidence developed in the hearing confirms that Claimant violated Carrier's rules. The Organization argues that the crew never left the area and a securement test was not needed. Claimant felt he was working as quickly and safely as possible and stated there was no need for a securement test while he was on another engine. The engines were left unattended on the main line with no securement test while Claimant was on another engine. The discipline was issued under Carrier's discipline Policy Matrix. We find 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 December 30, 2021.

PUBLIC LAW BOARD 7239

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

AWARD NO. 131
CASE NO. 131
FILE: 2020-226-01

STATEMENT OF CLAIM: Claim of KCS Engineer Jon Heinrich for the unwarranted discipline of 60 days suspension from service of which 30 actually served January 25, 2021 through February 23, 2021 and 30 days record suspension. This claim is for removal of all notations of discipline 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 Company's Air Brake Systems and Train Handling Rules and Instructions 101.10.1 - Minimizing Sticking Brakes.

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.

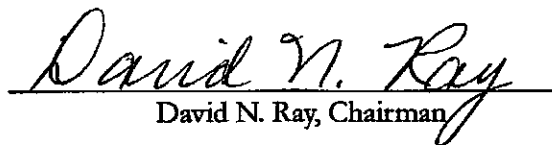
Claimant was employed on July 15, 1996, and subsequently promoted to engineer. On December 5, 2020, Claimant was engineer on the M-VNKC-05, operating from Mexico, Missouri to Kansas City, Missouri. Carrier received an alert that the Claimant's train had gone into emergency and as a result the event recorder was reviewed. The download revealed the Claimant did not make a proper brake application at two road crossings in Marshall, Missouri. 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.

The evidence developed in the hearing, including Claimant's testimony, confirms that Claimant violated Carrier's rules. The Organization argues that the date was off by one day on the hearing notice and the engine tapes were not as accurate as the Carrier suggests. We find neither objection fatal to the instant case. Claimant testified that at the first crossing he made a twelve pound reduction and at the second a little more. Claimant felt he was working safely with a "monster" train (184 cars, 46 loads, 138 empties, and 11,680 feet long). Carrier's rule states; "When the train air brakes are used to stop a train, and operating conditions permit, increase brake pipe reduction to at least 15 psi after stopping. The brakes must not be released until at least 20 seconds after the brake pipe exhaust stops." The train was stopped at both crossings and the record does not indicate any operating conditions which would prevent Claimant from making a fifteen pound brake application and waiting to release the brakes 20 seconds after the pipe exhaust stops as suggested in Carrier rules. Claimant's testimony alone indicates a violation of Carrier rules. The discipline was issued under Carrier's discipline Policy Matrix. We find no basis to overturn the Carrier's decision.

AWARD: Claim denied.



Jacob McCahill, Carrier Member



David N. Ray, Chairman



J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on December 30, 2021.

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AND TRAINMEN

TO

AWARD NO. 132
CASE NO. 132
FILE: 2021-732-01

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of KCS Engineer Jim Sprott for the unwarranted discipline of 60 days suspension from service of which 30 actually served January 15, 2021 through February 13, 2021 and 30 days record suspension. This claim is for removal of all notations of discipline 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 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.

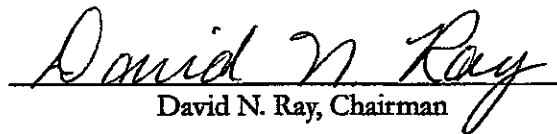
Claimant was employed on September 7, 2010, and subsequently promoted to engineer. On January 14, 2021, Claimant was the engineer on the I-DAAT2-13 operating from Shreveport, Louisiana to Jackson, Mississippi. A Carrier supervisor was conducting operations field tests by placing a yellow board at milepost 121.9 near Edwards, Mississippi. A green board was placed two miles east of the yellow flag at milepost 120. Claimant passed the green board at 44 miles per hour when the rule required Claimant to operate at 10 miles per hour. As a result, a hearing was scheduled and based on the evidence, Claimant was assessed a sixty day suspension, of which thirty days were served.

Substantial evidence developed in the hearing confirmed that Claimant violated Carrier's rules. The Organization argues the case was not proven and the discipline should be removed. The Organization adds that the crew never saw the yellow board and questioned whether it was actually present. A Carrier officer testified the yellow board was in place. At the time the crew passed the yellow board, the Claimant was blowing for three crossings and his conductor was copying a slow order. Based on the facts presented, the Board finds no basis to alter the Carrier's decision.

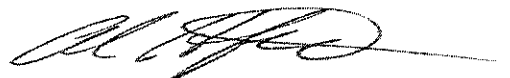
AWARD: Claim denied.



Jacob McCahill, Carrier Member



David N. Ray, Chairman



J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on December 30, 2021.

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AND TRAINMEN

TO

AWARD NO. 133
CASE NO. 133
FILE: 2021-729-01

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of KCS Engineer Reginald Owens for the unwarranted discipline of 60 days suspension from service of which 30 actually served February 8, 2021 through March 9, 2021 and 30 days record suspension. This claim is for removal of all notations of discipline 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 Company's Air Brake Systems and Train Handling Rules and Instructions 104.3.1 - Automatic Brakes.

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.

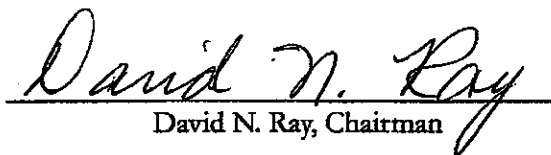
Claimant was employed on October 16, 2000, and subsequently promoted to engineer. On January 7, 2021, Claimant was engineer on the M-ARSH-06, operating from Jackson, Mississippi. Carrier investigated a derailment at Vicksburg, Mississippi, and as a result the event recorder was reviewed. The download revealed train handling issues. 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.

The evidence developed in the hearing confirms that Claimant violated Carrier's rules. The Organization argues the time limits were violated, but the postmark indicates no such violation. The Organization and Claimant state the derailment was the result of distributive power problems. The Investigation shows that Claimant released the automatic brake before all the brakes could be released prior to his train dropping below a speed of 15 miles per hour. In addition, the Claimant increased the throttle to Position 4 as the train was slowing to a stop and he failed to apply a sufficient brake pipe reduction. Claimant's train was 13,600 feet long. The hearing indicates the derailment was caused by Claimant making a slow running release violating numerous train handling rules. The discipline was issued under Carrier's discipline Policy Matrix. We find no basis to overturn the Carrier's decision.

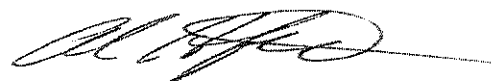
AWARD: Claim denied.



Jacob McCahill, Carrier Member



David N. Ray, Chairman



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. 134
CASE NO. 134
FILE: 2020-216-01

STATEMENT OF CLAIM: Claim of KCS Conductor Kyle Martin for the unwarranted discipline of 30 days suspension from service of which 5 actually served March 1, 2021 through March 5, 2021 and 25 days record suspension. This claim is for removal of all notations of discipline 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 Code of Operating Rules 7.1 - Switching Safely and Efficiently.

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 January 20, 2014. On December 6, 2020, Claimant was Conductor on the R-AR204-05, out of Artesia, Missouri. Carrier was informed of a derailment in the yard at Artesia, Mississippi. An investigation revealed Claimant was responsible for the switches involved in the derailment. 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 evidence developed in the hearing confirms that Claimant violated Carrier's rules. The Organization argues a trespasser could have thrown the switch or the switch was not working properly. Claimant shoved into Track 11 and noticed half the car going down a different track. The Claimant stated there was a possibility he did not line the switch for Track 5 and may have lined Track 11 causing the derailment. The investigation indicates a switch was thrown under a car causing a derailment. Claimant was responsible for the switches. The discipline was issued under Carrier's discipline Policy Matrix. We find 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

AWARD NO. 135
CASE NO. 135

TO

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Can the Carrier reduce back pay owed to Claimant by deducting payments received from Income Protection Plans (private job insurance).

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.

On March 30, 2021, Case 127 of this Board was sustained. The Award provided that Claimant be returned to and paid for time lost with deductions made for any outside earnings.

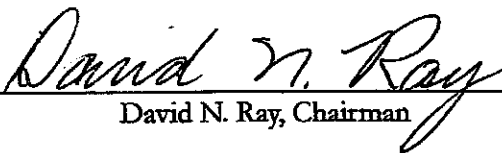
Claimant was returned to work and issued a check for lost time. Carrier made appropriate deductions for outside earnings and included in the calculations Claimant's proceeds from a private job insurance policy that Claimant has maintained for twenty two years. Carrier argues the deduction is proper and states Claimant should not be rewarded by receiving additional compensation over and above what he would have earned during the period he was dismissed. The Organization argues Claimant only received unemployment benefits and proceeds from a Discipline Income Protection Program.

The Carrier presented Awards in support of their practice to deduct outside earnings when pay for lost wages is included in an Award. In Award 1 of PLB 7239, Neutral Elizabeth C. Wesman stated; "Claimant should be reimbursed in a manner which left him no worse, nor any better, off than he would have been". Referee James M. Darby wrote in an Interpretation of First Division Award 26687; "the goal is to place the employee in the same position he or she would have been but for the employer's breach of the labor agreement". Carrier argues that these Awards support their position to deduct proceeds from private insurance as the employee actually benefited financially during the period he was off work.


The Organization also presented Awards that favor their position that proceeds from private insurance should not be used as an offset to lost earnings. In an Interpretation of Award 34 of PLB 6192, Neutral Robert E. Peterson wrote; "The Board likewise finds no basis to hold because payments made by the Job Benefit Fund constitute taxable income, that this fact gives the Carrier a right of offset." In another Interpretation of Award 21 of PLB 7601, Neutral Robert E. Peterson wrote; "It is not the intent of the above referenced language that the Carrier is entitled to include as an offset or mitigation of damages in the computation of outside earnings, any income that Claimant received by reason of his voluntary participation in the UTU Job Benefit Fund". Referee Barry E. Simon wrote in an Interpretation of First Division Award 30260; "the Carrier may not offset the Claimant's lost wages with any payment she received by reason of her voluntary participation in the Relief and Compensation Fund". In an Interpretation of Award 27 of PLB 7612, Neutral John L. Easley wrote; "The Board does not believe that compensation from a job benefit fund is a viable offset to an Award involving pay for time lost".

This Board has considered the position and supporting Awards presented by both parties and find in favor of the Organization. The Awards presented are on point and well reasoned for application to the instant dispute. The consistent application of this dispute, as presented, is that payments received from voluntary participation in the Relief and Compensation Fund cannot be used to offset an Award involving pay for time lost. Claimant in Award Award 127 of this Board was returned to work on April 20, 2021. The Board concludes that Carrier is not entitled to offset compensation received from Claimant's voluntary participation in the Income Protection Plan while he was out of service.

AWARD: Claim sustained.



David N. Ray, Chairman



Jacob McCahill, Carrier Member



J. Alan Holdcraft, Employee Member