

FROM THE DESK OF
DAVID RAY

August 10, 2023

Mr. J. Alan Holdcraft, Vice President
Brotherhood of Locomotive Engineers and Trainman
8320 Thornridge Dr.
North Richland Hills, TX 76182

Mr. Jacob McCahill, Assistant Vice President
CPKC
P. O. Box 219335
Kansas City, Missouri 64121-9335

Board Members,

Enclosed are signed copies of Awards 146-153 of PUBLIC LAW BOARD 7239. Please sign and forward to the other party for their signature. I would appreciate it if the Carrier would send me fully signed copies for my records and handle the normal distribution to the National Mediation Board. If I can be of further assistance, please advise.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "D. Ray".

David N. Ray, Chairman

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE
 ENGINEERS AND TRAINMEN
 TO

AWARD NO. 146
CASE NO. 146
FILE: 2021-1137-01

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

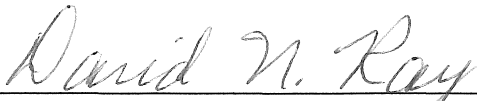
STATEMENT OF CLAIM: Claim of KCS Conductor Rowe Viola for the unwarranted discipline of two (2) points under the Availability Policy Train, Engine & Yard (TE&Y) Employees. This claim is for removal of all notations of discipline from his personal work record of discipline assessed, and an additional 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 and The Kansas City Southern Railway Company's System Circulars No. 001 - Availability Policy for Train Engine & Yard(TE&Y) Employees.

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. On September 20, 2021, while working a regular assignment in Shreveport, Louisiana, Claimant was charged with being in violation of Carrier's attendance policy between June 16, 2021 and September 14, 2021. As a result, a hearing was scheduled and based on the evidence, Claimant was assessed two points.

The evidence developed in the hearing confirms that Claimant violated Carrier's policy. The Organization argues that the discipline is excessive and is mitigated by Claimant's medical condition. The Organization states claimant took a week of emergency vacation and marked off the days before and after this vacation because of illness. In addition to his regular off days, Claimant had a total of six uncompensated layoffs which affected eight days of availability. Almost all of the layoffs were before or after scheduled off days or vacation. Claimant had medical documentation for some of the absences. It is noted Claimant has a long history of attendance issues. The Board finds no reason 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 August 10, 2023.

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE AWARD NO. 147
 ENGINEERS AND TRAINMEN CASE NO. 147
 TO FILE: 2021-1244-01

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

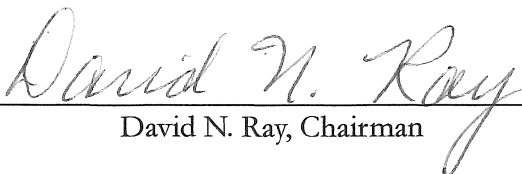
STATEMENT OF CLAIM: Claim of KCS Engineer Cole Smith for the unwarranted discipline of two (2) points under the Availability Policy Train, Engine & Yard (TE&Y) Employees. This claim is for removal of all notations of discipline from his personal work record of discipline assessed, and an additional day's 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 and The Kansas City Southern Railway Company's System Circulars No. 001 - Availability Policy for Train Engine & Yard(TE&Y) Employees.

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, and was subsequently promoted to engineer. On November 27, 2021, while working on the extra board out of Shreveport, Louisiana, Claimant was charged with being in violation of Carrier's attendance policy between August 19, 2021 and November 17, 2021. As a result, a hearing was scheduled and based on the evidence, Claimant was assessed two points.

The evidence developed in the hearing confirms that Claimant violated Carrier's policy. The Organization argues that the discipline is excessive and is mitigated by Claimant's COVID concerns. Claimant had a total of five uncompensated layoffs which affected eighteen days of availability. Claimant stated he was thinking about the pandemic had medical documentation which he claimed covered ten of the absences. Carrier argued Claimant did not follow COVID protocols. Claimant had 50 starts during the period in question. The Board finds no reason 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

AWARD NO. 148
CASE NO. 148
FILE: 2021-1288-01

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

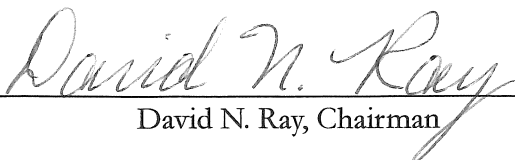
STATEMENT OF CLAIM: Claim of KCS Engineer Charles Ingram for the unwarranted discipline of two (2) points under the Availability Policy Train, Engine & Yard (TE&Y) Employees. This claim is for removal of all notations of discipline from his personal work record of discipline assessed, and an additional 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 and The Kansas City Southern Railway Company's System Circulars No. 001 - Availability Policy for Train Engine & Yard(TE&Y) Employees.

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.

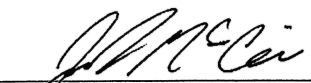
Claimant was employed on July 22, 1990, and was subsequently promoted to engineer. On December 20, 2021, while working on a regular assignment in Gulfport, Mississippi, Claimant was charged with being in violation of Carrier's attendance policy between September 11, 2021 and December 10, 2021. As a result, a hearing was scheduled and based on the evidence, Claimant was assessed two points.

The evidence developed in the hearing confirms that Claimant violated Carrier's policy. The Organization argues that the discipline is excessive and is mitigated by Claimant's medical condition. In addition to off days, Claimant had a total of four uncompensated layoffs which affected six days of availability. Claimant stated he spoke to a Carrier officer regarding his medical condition and applied for FMLA. Carrier argued the Carrier officer had no authority to determine medical issues. Claimant was not approved for FMLA during the test period, but testified he has since been approved for FMLA. 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.



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

AWARD NO. 149
CASE NO. 149
FILE: 2021-1258-01

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

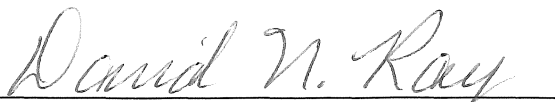
STATEMENT OF CLAIM: Claim of KCS Engineer Keith Sharrah for the unwarranted discipline of two (2) points under the Availability Policy Train, Engine & Yard (TE&Y) Employees. This claim is for removal of all notations of discipline from his personal work record of discipline assessed, and an additional 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 and The Kansas City Southern Railway Company's System Circulars No. 001 - Availability Policy for Train Engine & Yard(TE&Y) Employees.

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 April 11, 2011, and was subsequently promoted to engineer. On December 3, 2021, while working on the Engineer's extra board out of Shreveport, Louisiana, Claimant was charged with being in violation of Carrier's attendance policy between August 25, 2021 and November 23, 2021. As a result, a hearing was scheduled and based on the evidence, Claimant was assessed two points.

The evidence developed in the hearing confirms that Claimant violated Carrier's policy. The Organization argues that the discipline is excessive and is mitigated by Claimant's COVID concerns. Claimant had a total of five uncompensated layoffs which affected sixteen days of availability and included five weekends. Carrier argued Claimant did not follow COVID protocols. Claimant had 52 starts during the period in question. The Board finds no reason 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

AWARD NO. 150
CASE NO. 150
FILE: 2022-1365-01

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

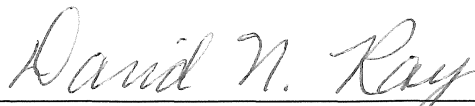
STATEMENT OF CLAIM: Claim of KCS Engineer Beau Mazingo for the unwarranted discipline of two (2) points under the Availability Policy Train, Engine & Yard (TE&Y) Employees. This claim is for removal of all notations of discipline from his personal work record of discipline assessed, and an additional 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 and The Kansas City Southern Railway Company's System Circulars No. 001 - Availability Policy for Train Engine & Yard(TE&Y) Employees.

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 18, 2003, and was subsequently promoted to engineer. On February 7, 2022, while working on the Engineer's extra board out of Meridian, Mississippi, Claimant was charged with being in violation of Carrier's attendance policy between October 31, 2021 and January 28, 2022. As a result, a hearing was scheduled and based on the evidence, Claimant was assessed two points.

The evidence developed in the hearing confirms that Claimant violated Carrier's policy. The Organization argues that the discipline is excessive. Claimant had a total of four uncompensated layoffs which affected eleven days of availability and included five weekends. Claimant stated he wasn't feeling well because he missed his children. Claimant advised these personal issues resulted in his need to be off. Claimant had 48 start during the period in question. The Board finds no reason 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 AWARD NO. 151
 ENGINEERS AND TRAINMEN CASE NO. 151
 TO CARRIER FILE: 2023-0069NTC
 ORGANIZATION FILE: 2023-0069NTC Insurance Issue
DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of KCS Engineers for the unwarranted interpretation of Rule 52 of the Gateway Wester Railway and Rule 55 of the Midsouth Rail Corporation's respective Collecting Bargaining Agreements. This claim is for clarification of the interpretation for spouses of an employee who is retiring after 60 years of age with 30 years of service with the Carrier. The Organization claims the spouse should be entitled to full coverage of health insurance as afforded to active employees until the time the spouse reaches age 65 years old.

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 May 8, 2023, the Organization filed a claim on behalf of Engineers with 30 years of service that reached 60 years of age for certain insurance benefits citing as support Rule 52 of the Gateway Wester Railway and Rule 55 of the Midsouth Rail Corporation's respective Collecting Bargaining Agreements. The Organization argues that qualified employees and their spouses should be paid under the clear contractual provisions of the agreement until they both reach age 65. The Organization is adamant that the agreement language is clear and there are no restrictions as suggested by the Carrier. As support for their position, they cite Question and Answer No. 1 attached to the Agreement of both rules. Question and Answer 1 states:

Q. 1 How will an MSRC (GWWR) engineer be treated under Article II (Rule 52) of this agreement if the employee choses to retire at age 60 with 30 years of service and was an employee prior to the date of this agreement?

A. 1. The engineer (or retired engineer if applicable) would be treated as an "active" employee for insurance purposes until both the engineer and his wife (spouse) reaches age 65 or becomes Medicare eligible.

Example: The engineer is 60 years of age, his/her spouse is 58 years of age and the engineer takes early retirement. When the engineer becomes 65 or Medicare eligible his/her spouse would still be treated a dependent of an active employee until he/she reached 65 or became Medicare eligible. The engineer would use Medicare as his primary insurance and active employees Health and Welfare as his secondary insurance. The same rule would apply if the engineer and spouse ages were reversed in this example.

The Carrier argues the engineer must be married to the spouse prior to the date of the Agreements in 2001 in order for the spouse to receive the health insurance benefit. As support for their position, they cite Question and Answer No. 2 attached to the Agreement of both rules. Question and Answer 2 states:

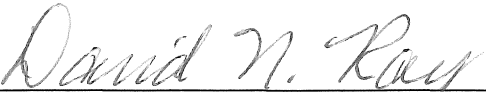
Q. 2. Will MSRC (GWWR) engineers or their wives hired after the date of this agreement be eligible for cost free early retirement?

A.2. No, not unless the engineer had seniority in another craft on the MSRC, such as train service, before the effective date of this agreement

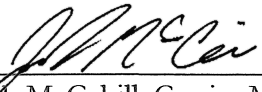
Carrier argues the claim is barred on time limits as the issue was raised in 2021 and not handled by the Organization within the prescribed time limits. We find the instant case to be a different claim and therefore it is not barred from handling on the merits. Carrier also states the claim is for all engineers on these properties and therefore too broad in scope to be properly considered. It is clear both parties understood the scope of the claim and the issue will be handled on the merits. Carrier argues the past practice observed between the parties to the agreement clearly show the proper understanding of the application of the agreement. Carrier states the agreement applied to a "closed" group of employees and their spouses (at that time) and was created to enjoy the benefits of the agreement. They argue their position is supported by clear language in the Collective Bargaining Agreement stating: "This understanding applies only to retirees or employees holding seniority on the former MidSouth Rail Corporation (Gateway Wester Railway) on the date the agreement becomes effective on MSRC (GWWR)."

It is clear the phrase "his wife" and "his spouse" referred to in Question and Answer No. 1 has been restricted to spouses at the time the agreement was signed. Although both Agreements do not specifically indicate it applies only to spouses married to engineers prior to the date of the agreement, the past practice on the property and the inference in Question and Answer 2 suggests that was the intended application of the rule. We find the Organization has not met it's burden to show that the Carrier has misapplied the rule.

AWARD: Claim denied.



David N. Ray, Chairman



Jacob McCahill, Carrier Member



J. Alan Holdcraft, Employee Member
I Dissent

Signed at Estero, Florida on August 10, 2023.

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE
 ENGINEERS AND TRAINMEN
 TO

AWARD NO. 152
CASE NO. 152
FILE: 2022-1499-01

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

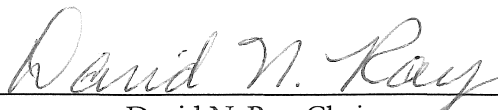
STATEMENT OF CLAIM: Claim of KCS Engineer Stacy Roberson for the unwarranted discipline of 15 days, as he was removed from service on April 25, 2022, pending an investigation. Engineer Roberson was not returned to service until May 10, 2022, resulting in 15 days total lost pay. This claim is for removal of all notations of discipline from his personal work record of discipline assessed for alleged violation of The Kansas City Southern Railway Company's General 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.

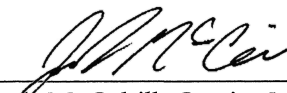
Claimant was employed on June 2, 2008. On April 15, 2022, Claimant was working as Brakeman on the R-CO202-15 out of Corinth, Mississippi. A Carrier officer was advised of two cars with their drawbars crossed and that were derailed. The crew prepared their train for departure. When the track was inspected, they noticed the derailed cars. As a result, a hearing was scheduled and based on the evidence, Claimant was assessed time served and a Training Event.

The evidence developed in the hearing confirms that Claimant violated Carrier's rules. The Organization argues no rules were violated and the discipline was harsh and excessive. Carrier states that in view of Claimant's discipline record, the discipline was appropriate. Claimant states nothing was unusual and he noticed the derailed cars when he was coupling cars on an adjacent track. Claimant was responsible for kicking the cars and testified he usually looks at draw heads and didn't notice anything crazy that day. Carrier argues when switching the cars, Claimant should have noticed the drawbars were misaligned and corrected the problem. The logical conclusion is that misaligned drawbars went undetected and caused the derailment. The Board finds no reason to overturn the Carrier's decision.

AWARD: Claim denied.



David N. Ray, Chairman



Jacobo McCahill, Carrier Member



J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on August 10, 2023.

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE
 ENGINEERS AND TRAINMEN
 TO

AWARD NO. 153
CASE NO. 153
FILE: 2022-1465-01

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY


STATEMENT OF CLAIM: Claim of KCS Engineer David Tinsley for the unwarranted discipline of two (2) points under the Availability Policy Train, Engine & Yard (TE&Y) 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 and The Kansas City Southern Railway Company's System Circulars No. 001 - Availability Policy for Train Engine & Yard(TE&Y) Employees.

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 May 11, 1994, and was subsequently promoted to engineer. On April 7, 2022, while working on a regular assignment in Jackson, Mississippi, Claimant was charged with being in violation of Carrier's attendance policy between December 29, 2022 and March 29, 2022. As a result, a hearing was scheduled and based on the evidence, Claimant was assessed two points.

The evidence developed in the hearing confirms that Claimant violated Carrier's policy. The Organization argues that the discipline is excessive and is mitigated by Claimant's medical condition. In addition to off days, Claimant had a total of five uncompensated layoffs with four attached to rest days. Claimant advised he suffers from depression which affects his sleep and his work. Claimant had medical documentation for one of the absences. The Board finds no reason to overturn the Carrier's decision.

AWARD: Claim denied.



David N. Ray, Chairman



Jacob McCahill, Carrier Member



J. Alan Holdcraft, Employee Member