

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AND TRAINMEN

AWARD NO. 82
CASE NO. 82
FILE: 2017-0124

TO

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

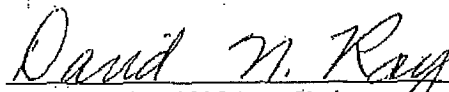
STATEMENT OF CLAIM: Appealing the Carrier's unwarranted dismissal from service assessed to Engineer David Lockhart on April 4, 2017, following the formal investigation held on March 29, 2017. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all Railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other Employment related benefits, which he would have received while in active service.

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.

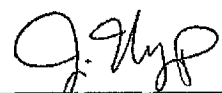
Claimant was employed on April 12, 2004, and subsequently promoted to engineer. On March 14, 2017, Claimant was an engineer out of Artesia, Mississippi. Claimant was administered a follow up alcohol test, which was positive for alcohol. As a result, a hearing was held and based on the evidence, Claimant was dismissed.

There is substantial evidence to support the charges. Claimant entered a self-referral program which required follow up testing. The evidence presented at the investigation indicated Claimant's test was positive for alcohol in violation of Carrier rules. During the investigation, Claimant stated that he had enrolled in counseling through the Carrier's Employee Assistance Program (EAP). The Organization posits that Claimant should be allowed to return to work after completing EAP requirements. 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.

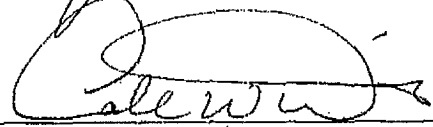
AWARD: Claim sustained, in part, in accordance with Findings.



David N. Ray, Chairman



Jennie Nyp, Carrier Member



Cole W. Davis, Employee Member

Signed at Estero, Florida on September 13, 2018.

PUBLIC LAW BOARD 7239

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

AWARD NO. 83
CASE NO. 83
FILE: 2017-0319

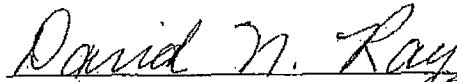
STATEMENT OF CLAIM: Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Michael Oliver on July 7, 2017, following the formal investigation held on June 28, 2017. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all Railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other Employment related benefits, which he would have received while in active service.


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.

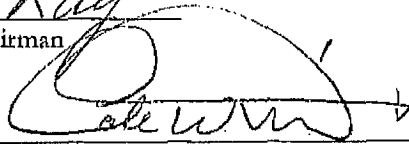
Claimant was employed on October 14, 2002, and subsequently promoted to engineer. On June 8, 2017, Claimant was the engineer on the MSHAR-07 out of in Jackson, Mississippi. The Carrier was advised of a possible power braking episode at milepost 89.6. An investigation revealed Claimant was in throttle position 5 using the automatic brake while shoving 95 cars on a descending grade in Jackson Yard. As a result, a hearing was held and based on the evidence, Claimant was dismissed.

Substantial evidence support the charges. The Organization posits that Claimant's discipline was excessive considering the circumstances and the accuracy of the downloads. Carrier's Operating Rules require the brake pipe pressure to be limited to 15 pounds, when practical, and the engine to be in throttle position 4 or lower. Based on locomotive downloads, Claimant was in throttle position 5 for less than a minute. The Carrier states the automatic air pressure applied was 16 pounds while the Organization argues the download indicates 14 pound of air pressure. The instant violation is not a dismissal offense, but the major rules infraction together with Claimant's discipline record subjected Claimant to dismissal under Carrier's discipline policy. However, in view of the circumstances, this Board does not see this instance as a reason for permanent dismissal and will allow Claimant another opportunity to show that he can be a rule abiding and productive member of the Carrier workforce. The Board will return Claimant to service, but without pay for time lost.

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


David N. Ray, Chairman


Jennie Nyp, Carrier Member


Cole W. Davis, Employee Member

Signed at Estero, Florida on September 13, 2018.

PUBLIC LAW BOARD 7239

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

AWARD NO. 84
CASE NO. 84
FILE: 2017-0426

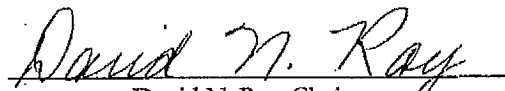
STATEMENT OF CLAIM: Appealing the Carrier's unwarranted dismissal from service assessed to Conductor/Engineer Quentin Pugh on August 16, 2017, following the formal investigation held on August 11, 2017. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all Railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other Employment related benefits, which he would have received while in active service.

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.

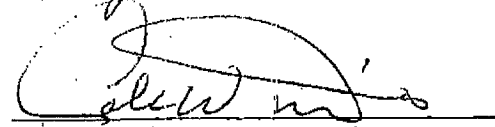
Claimant was employed on February 28, 2011, and subsequently promoted to engineer. Claimant was working as a conductor out of Kansas City, Missouri. On July 31, 2017, Claimant accepted a call at 12:08 a.m. as engineer on the IVNKC-29 on duty in Kansas City, Missouri. Claimant fell back asleep and was late for work. As a result, a hearing was scheduled and based on the evidence, Claimant was dismissed.

The evidence developed in the hearing confirms that Claimant violated Carrier's policy. The Organization has advanced numerous procedural arguments, which the Board finds are not fatal to the instant case. Claimant was stepped up to work the assignment and, after reporting late, was permitted to work the assignment. Claimant has a history of failing to be available for work. Claimant is subject to dismissal under Carrier's Availability policy. Considering the circumstances in this case including Claimant's attendance and discipline records, the Board will not alter the Carrier's decision.

AWARD: Claim denied.


David N. Ray, Chairman


Jennie Nyp, Carrier Member


Cole W. Davis, Employee Member

Signed at Estero, Florida on September 13, 2018.

PUBLIC LAW BOARD 7239

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

AWARD NO. 85
CASE NO. 85
FILE: 2017-0645

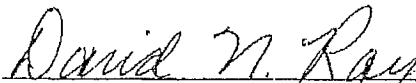
STATEMENT OF CLAIM: Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Jonathan Odom on November 17, 2017. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all Railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other Employment related benefits, which he would have received while in active service.

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.

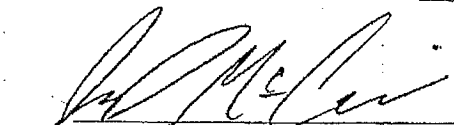
Claimant was employed on October 4, 2004, and subsequently promoted to engineer. On November 8, 2017, Claimant was working as an engineer out of Monroe, Louisiana on the M-JASH. A company official observed locomotive KCS 4624 of Claimant's train, and found two inward facing cameras were blocked. Upon further observation, it was discovered the inward facing cameras had a black trash bag over the camera lens. The video was reviewed and revealed that Claimant placed the bag over the cameras of the trailing unit. The cameras are located in the cab of the locomotive and can be used to observe the actions of crews in the event of a major incident. As a result, a hearing was held, and based on the evidence, Claimant was dismissed.

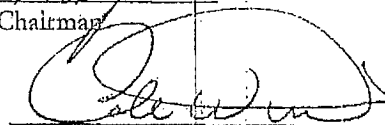
Substantial evidence supports the charges. Claimant admitted he placed the bag over the cameras while he used the restroom in the second unit and forgot to take it off. The Carrier states Claimant is guilty of the offense and the discipline was warranted in view of the seriousness of the rules violation. Carrier adds that the cameras do not view the bathroom. The Organization argues under these circumstances charges should not have been filed and Claimant should be compensated for all lost time. Based on Claimant's tenure, discipline record and the circumstances present, it is the Board's decision that Claimant be returned to work with seniority unimpaired, but without pay for time lost.

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



David N. Ray, Chairman


Jacob McCahill, Carrier Member


Cole W. Davis, Employee Member

Signed at Estero, Florida on December 2, 2018.

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AND TRAINMEN
TO

AWARD NO. 86
CASE NO. 86
FILE: 2017-0656

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

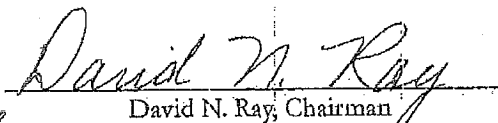
STATEMENT OF CLAIM: Claim of KCS Engineer Howard Wilkerson for the unwarranted discipline of 2 point. This claim is for removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of The Kansas City Southern Railway Company's General Code of Operating Rules 1.15 - Duty - Reporting or Absence and The Kansas City Southern Railway Company's System Circular No. 001 - Availability Policy for Train, Engine & Yard (TE&Y) Employees.

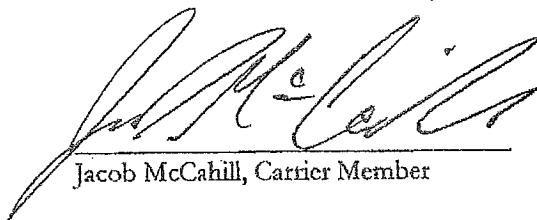
FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

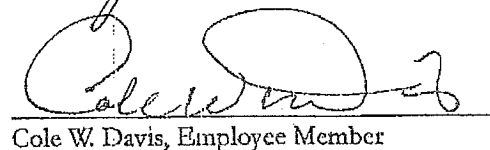
Claimant was employed on May 13, 2002. On November 17, 2017, while working as engineer on the Meridian, Mississippi extra board, Claimant was charged with being in violation of Carrier's attendance policy between August 9, 2017 and November 7, 2017. As a result, a hearing was scheduled and based on the evidence, Claimant was assessed two points.

The evidence developed in the hearing confirms that Claimant violated Carrier's policy. The Organization argues that Claimant was not warned regarding his attendance and there was no excessive pattern of layoffs. During the test period, Claimant marked off six times affecting 24 days and 6 weekends. Carrier's Policy prohibits frequent personal lay offs. The Board finds no reason to overturn the Carrier's decision.

AWARD: Claim denied.


David N. Ray, Chairman


Jacob McCahill, Carrier Member


Cole W. Davis, Employee Member

Signed at Estero, Florida on December 24, 2018.

PUBLIC LAW BOARD 7239

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

AWARD NO. 87
CASE NO. 87
FILE: 2017-0685

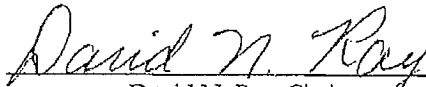
STATEMENT OF CLAIM: Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Sean Barnes on December 11, 2017, following the formal investigation held on December 06, 2017. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all Railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other employment related benefits that he would have received while in active service.


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.

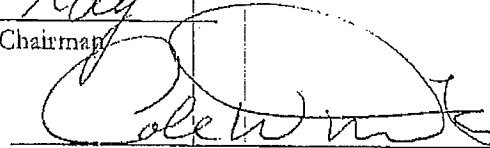
Claimant was employed February 2, 2009, and was subsequently promoted to engineer. Claimant was an engineer working out of East Saint Louis, Illinois. On November 25, 2017, Claimant was at his away from home terminal Mexico, Missouri when he was called for work. Claimant didn't respond to the call. Claimant was awakened by a Carrier supervisor who performed a signs and symptoms test and arranged for a reasonable suspicion test. Claimant was administered the reasonable suspicion test, which was confirmed back to the Carrier as positive for alcohol. As a result, a hearing was held and based on the evidence, Claimant was dismissed.

Substantial evidence, including Claimant's testimony, supports the charge. Claimant failed his drug test which was administered when he should have been working. During the investigation, Claimant stated that he had enrolled in counseling through the Carrier's Employee Assistance Program (EAP). The Organization posits that Claimant should be allowed to return to work after completing EAP requirements. 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.


David N. Ray, Chairman


Jacob McCahill, Carrier Member


Cole W. Davis, Employee Member

Signed at Estero, Florida on December 2, 2018.

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AND TRAINMEN
TO

AWARD NO. 88
CASE NO. 88
FILE: 2017-0746

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

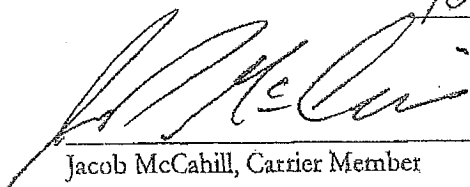
STATEMENT OF CLAIM: Claim of KCS Engineer Chad Hawn for the unwarranted discipline of 5 days Actual Suspension from service (December 30, 2017 through January 3, 2018) and 25 days recorded suspension, which actual time withheld without pay December 30, 2017 to and including January 28, 2018 (30 day total out of service) assessed to Engineer Hawn. 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 Kansas City Southern Railway's Company's General Code of Operating Rules 5.4.7 - Display of Red Flag, GCOR Rule 6.28 - Movement on Other than Main Track and The Kansas City Southern Railway Company's Air Brake Systems and Train Handling Rules and Instructions Rule 109.1 - Engineer Responsibilities and Certification, Engineer and Conductor General 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 April 11, 1995, and was subsequently promoted to engineer. Claimant was Engineer on YVN305-28 on December 29, 2017, switching an industry in East St. Louis. Company Officers were performing operational tests by placing a red flag at the frog of the lead switch at the industry to test for restricted speed. Claimant failed to stop short of the red flag. 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).

Claimant was working an industry near Milepost 282.8 at in Sauget, Illinois. The Organization stated the engine was operating on a curve with the long hood forward. Claimant knew he had forty car lengths of head room. The Organization further stated the test was procedurally defective and Claimant was destined to fail the test. A Carrier witness stated Claimant could have stood up and looked out the two center windows to see the flag. The Carrier states Substantial evidence was presented to indicate Carrier rules were violated. However, in view of the particular circumstances and Claimant record, the Board will remove the discipline from Claimant's record, but deny any pay for time lost with Claimant being placed at MAPS 0 status.

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


Jacob McCahill, Carrier Member


David N. Ray, Chairman


Cole W. Davis, Employee Member

Signed at Estero, Florida on December 24, 2018.

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AND TRAINMEN

AWARD NO. 89
CASE NO. 89
FILE: 2018-0016

TO

DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

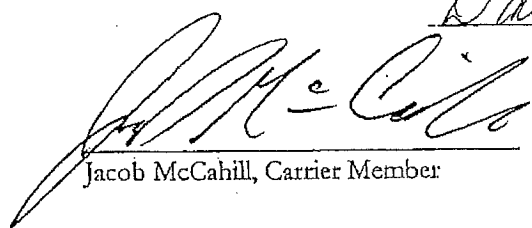
STATEMENT OF CLAIM: Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Michael Davis on February 6, 2018, following the formal investigation held on February 2, 2018. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all Railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other employment related benefits that he would have received while in active service.

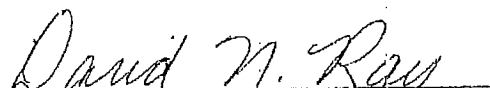
FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.


Claimant was employed on January 11, 1999, and was subsequently promoted to engineer. Claimant was serving as the Engineer on the MVNKC-26 on January 27, 2018 out of Kansas City, Missouri. A Carrier supervisor was advised that Claimant's train had delays and he investigated the reasons for the delays. The event recorder was checked and the crew interviewed. The investigation revealed the Claimant did not properly set the controls for a red zone and failed to properly perform two air brake tests while working at Slater, Missouri. 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 rules. The record revealed the Claimant picked up cars in Slater, Missouri without performing the required Class I Brake Test. Claimant also neglected to center the reverser while his crew member was in the red zone releasing handbrakes after a coupling move. Claimant neglected to properly setup a red zone and perform a proper Class I Brake Air Test in violation of Carrier rules. The instant violation is not a dismissal offense, but the major rules infraction together with Claimant's discipline record subjected Claimant to dismissal under Carrier's discipline policy. The Board has no basis to alter the Carrier's decision.

AWARD: Claim denied.


Jacob McCahill, Carrier Member


David N. Ray, Chairman


Cole W. Davis, Employee Member

Signed at Estero, Florida on December 24, 2018.

PUBLIC LAW BOARD 7239

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

AWARD NO. 90
CASE NO. 90
FILE: 2018-0103

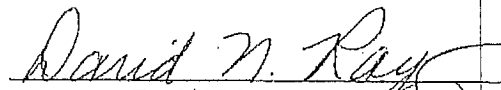
STATEMENT OF CLAIM: Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Jared Crotts on April 5, 2018, following the formal investigation held on March 25, 2018. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all Railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other employment related benefits that he would have received while in active service.

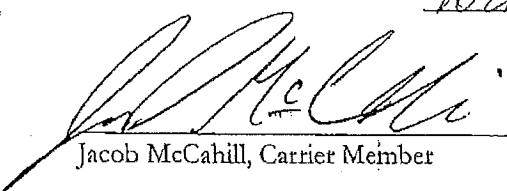
FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

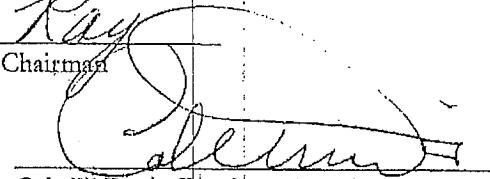
Claimant was employed on April 12, 1999, and subsequently promoted to engineer. On March 12, 2018, while Claimant was working as an engineer out of Corinth, Mississippi, Carrier was notified that Claimant had possible fraud charges brought against him around February 27, 2018. Claimant's situation was reviewed and it was discovered that Claimant was charged with a misdemeanor fraud charge on February 27, 2018. Claimant did not properly notify the Carrier of the charges as required by rule. As a result, a hearing was held, and based on the evidence, Claimant was dismissed.

Substantial evidence supports the charges. Carrier's rule requires that Claimant report a fraud charge within forty eight hours advising specific information. Claimant did not believe the circumstances required him to report the incident under Carrier's rule. Claimant went to the jailhouse to post bail for his father. He was informed there was a warrant for his arrest for a bad check. He paid the fine and the matter was dropped in a matter of minutes. The Organization argues under these circumstances charges should not have been filed and Claimant should be compensated for all lost time. The rule is clear in that "any crime involving violence, theft or fraud" must be reported. Based on Claimant's tenure, discipline record and the circumstances present, it is the Board's decision that Claimant be returned to work with seniority unimpaired, but without pay for time lost.

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


David N. Ray, Chairman


Jacob McCahill, Carrier Member


Cole W. Davis, Employee Member

Signed at Estero, Florida on December 2, 2018.

PUBLIC LAW BOARD 7239

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

AWARD NO. 91
CASE NO. 91
FILE: 2018-0110

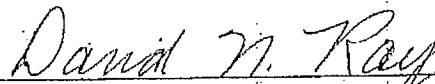
STATEMENT OF CLAIM: Claim of KCS Engineer Tony Murray for the unwarranted discipline of one (1) point under the Availability Policy for Train, Engine & Yard Employees. This claim is for removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of The Kansas City Southern Railway Company's General Code of Operating Rules 1.16 - Subject to Call.

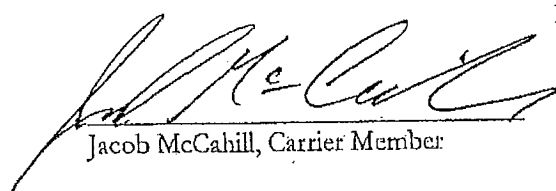
FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

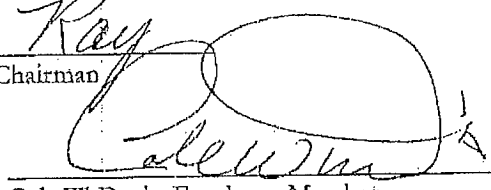
Claimant was employed on November 11, 2002, and was subsequently promoted to engineer. On March 16, 2018, while working out of Bossier City, Louisiana, Claimant was called to fill the Engineer position on the MSHJA-16, on duty at 6:30 a.m. in Shreveport, Louisiana. The VRU system called Claimant six times at his contact number. Claimant did not take the call and was marked off as a missed call at 4:50 a.m. As a result, a hearing was scheduled and based on the evidence, Claimant was assessed one point.

The evidence developed in the hearing confirms that Claimant violated Carrier's rules. Claimant entered his cell bill which the Organization states clearly shows he did not receive a call. At&T provided documentation of a local service outage. The local Carrier supervisor advised Claimant the issue would go away if such proof was provided. The Carrier states Claimant chose to only have one phone number on file and must accept the risk of services outages. We Agree. Claimant advised he changed phone carriers and made arrangements to be contacted two different ways. 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


Cole W. Davis, Employee Member

Signed at Estero, Florida on December 24, 2018.