AWARD NO. 13
NMB CASE NO. 13

PUBLIC LAW BOARD NO. 7239

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

And

MidSouth Rail Corporation (Kansas City Southern Rwy.)

STATEMENT OF CLAIM:

Claim of MidSouth Rail Engineer Michael S. Tyner for reinstatement to service with seniority and vacation rights unimpaired, with all notations pertaining to discipline assessed on August 28, 2009 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a MidSouth Rail Engineer for allegedly violating Kansas City Southern Railway's Air Brake and Train Handling Rules & Instructions 102.4 – Locomotive Air Brake Test and 102.4.2 – Procedure for Light Locomotive Running Air Brake test in connection with alleged failure to conduct a light locomotive running air brake test after changing operating ends and moving light locomotives from the north end to the south end of the Shreveport Terminal yard tracks at or near MP 552.4, Shreveport, LA while serving as Engineer of Train IJALZ-24 at approximately 8:16 a.m. on July 25, 2009.

OPINION OF BOARD:

Prior to his dismissal, Claimant M. S. Tyner was employed in Carrier's Train and Engine Service. On July 25, 2009, the date of the incident giving rise to this claim, he was assigned as the Engineer on Train IJALZ-24 operating from Jackson, Mississippi to

Shreveport, Louisiana. At or about 8:16 a.m. the train arrived in the Shreveport Yard. After yarding the train, the crew was directed to operate its light locomotive consist back to the opposite end of the yard. At approximately 9:14 a.m. the Manager of Operating Practices performed a routine download of the event recorder on the locomotive on train IJALZ-24.

On August 3, 2009, Claimant was notified to appear for a formal investigation into the following charge:

> ...While serving as an Engineer of Train IJALZ-24, it is alleged that you failed to perform your job in a safe and proper manner by failing to conduct a light locomotive running air brake test after changing operating ends and moving light locomotives from the north end to the south end of the Shreveport Terminal yard tracks....

A hearing was held on August 21, 2009. Following that hearing, by letter of August 28, 2009, Claimant was notified that he had been found guilty as charged and was dismissed from Carrier's service as of that date.

The Organization filed a claim on Claimant's behalf on September 14, 2009. In that claim the organization maintained Claimant had been singled out for discipline, while other crew members were not disciplined at all. It also protested that there was no cause to hold Claimant out of service pending his formal investigation. The Organization asserted in addition that Carrier's chief witness did not have first-hand knowledge of the situation, since he was relying only on the downloaded event tapes and not on contemporaneous interviews with the Claimant and his crew. Finally, the

Organization insisted that the quantum of discipline was excessive, given Claimant's prior discipline record.

The Carrier denied the claim on October 5, 2009, and the claim was subsequently progressed in accordance with the Parties Agreement, including conference on the property on February 23, 2010. It is thus properly before the Board for resolution.

The Board has reviewed the record in this case carefully. We do not agree with the Organization that the Carrier had no basis upon which to remove Claimant from service pending the formal investigation. In light of the fact that the violation alleged was a serious safety matter, the Carrier had a reasonable basis for holding Claimant out of service until the charges could be considered and a defense presented. Moreover, we find no indication that Claimant was singled out for discipline. This was a situation in which it was Claimant's clear responsibility to make the air brake test. Other crew members were occupied with other duties, and there is no indication on this record that they were complicit in, or responsible for the Claimant's completion of, or failure to complete, his tasks.

The Board also does not agree that the downloaded event records constitute inadmissible, or at least questionable, hearsay evidence. There is no indication that the event recorder in this case was in any way faulty, either in its calibration or in its ability to properly record what it was supposed to. The documents essentially speak for

themselves and the testimony of the Manager of Operating Practices' is material only for the fact that he stated that he downloaded the records at the time and that the records at the hearing were the same ones he downloaded.

Finally, with respect to the quantum of discipline, we have reviewed Claimant's prior discipline record and, in the final analysis, we find no basis for overturning Carrier's assessment of discipline in this case.

AWARD

Claim denied.

Elizabeth C. Wesman

Elizabeth C. Wesman, Chairman

Organization Member

Donald E Emery

Carrier Member

Dated June 21, 2010