

AWARD NO. 30  
NMB CASE NO. 30

PUBLIC LAW BOARD NO. 7239

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Kansas City Southern Railway Company  
(former MidSouth Railway)

STATEMENT OF CLAIM:

Appealing the thirty (30) day suspension consisting of a 5-day active suspension and a 25-day record suspension of MidSouth Rail Engineer Bobby B. Rivers for the alleged violation of Kansas City Southern Railway Company's Air Brake Systems and Train Handling Rules 109.1 - Locomotive Engineer and Remote Control Operator Responsibilities in connection with an incident that occurred on Tuesday, October 11, 2011, at approximately 1:00 p.m., when it is alleged that he failed to have his Engineer's Certification Card while serving as Engineer on the M-JXSH-11.

OPINION OF BOARD:

The Claimant, Bobby Rivers, has been employed in the Carrier's train service since September of 1997. He is currently employed as an Engineer. At the time the incident leading to his discipline occurred, he was working as an Engineer in freight service out of Shreveport, Louisiana. On October 11, 2011, he was called to operate as

Engineer on Train JXSH from Jackson, Mississippi to Shreveport. At approximately 1:00 p.m. a Carrier officer conducting a "Safety Blitz" boarded Claimant's train at Simsboro, Louisiana. As part of that Safety Inspection, the Carrier officer asked Claimant to produce his Engineer's Certification Card. Claimant was not immediately able to produce his Certification Card, but stated it was somewhere in his bag.

Claimant was notified on October 20, 2011 to attend a formal investigation into the following charge:

...in connection with an incident that occurred on October 11, 2012, at approximately 1:00 p.m., while serving as an Engineer on the M-JXSH-11, it is alleged that you failed to have your Engineer's certification card.

A hearing was held on November 2, 2011. Following that hearing, by letter of November 11, 2011, the Carrier notified Claimant that he had been found guilty as charged and was assessed a thirty (30) day suspension, consisting of five (5) days actual suspension and a twenty-five (25) day record suspension.

The Organization filed a claim on Mr. Rivers' behalf on January 4, 2012. The Carrier denied that claim on January 10, 2012. That denial was appealed on January 13, 2012, and the matter was progressed according to the Parties' Agreement including conference on the property on July 23, 2012, after which it remained unresolved. Accordingly, it is properly before the Board for determination.

It is the position of the Carrier that the investigation developed substantial evidence to prove Claimant was guilty as charged. It notes that the rule is clear:

Claimant was required to have his Engineer Certification Card in his possession while on duty. He admitted during the investigation that he did not present the card to the Carrier Officer when asked. The Carrier dismisses Claimant's explanation that it was in his bag, and when he dumped it out after going off duty in Shreveport the card fell out from one of the books in his bag. In light of the foregoing, the Carrier asserts that the penalty assessed was appropriate.

The Organization protests that Claimant did, in fact, have his card with him. However, it points out that Claimant is also a reservist and carries his bag with him when he goes on duty. Moreover, it contends that the Carrier Officer intentionally did not give Claimant sufficient time to find his card among the books in his bag, which included the required railroad manuals, before determining that Claimant had committed a "major" violation, and removing him from his train. The Organization also points out that there is no question that Claimant's certification was up to date, and that he attempted without success to show the Carrier Officer that he did, indeed, have it in his possession when he dumped his bag out on his way back to Shreveport. It notes that despite that attempt, his Organization representative called him and told him that the investigation would proceed nonetheless. Thus, the Organization maintains, the card had been in Claimant's possession when the Carrier Officer originally approached him and no discipline is warranted.

The Board has considered the record before us in its entirety. Undisputed testimony on the transcript indicates that Claimant did find his Engineer Certification

Card once he got to Shreveport and that he attempted without success to contact the Carrier Officer filing the charge against him. He also apparently successfully contacted his Organization representative with the information that he had found his Card. At the hearing he testified as well that he does not carry a wallet "for security reasons", but had the document with him. While we agree with the Organization that there is no evidence on this record to suggest Claimant failed to have his Engineer Certification Card "in his possession" while on duty, as specified by FRA regulations, the fact remains that he was unable to produce it for the Carrier Officer in a timely manner. Under the circumstances we find that the discipline assessed in this instance was excessively harsh, but that some discipline is warranted, given the strict FRA requirements. Accordingly we find that Claimant's discipline should be reduced to a letter of reprimand, that the suspension removed from his personnel file, and that he receive back pay for the five (5) actual days he was suspended.

AWARD

Claim sustained only to the extent set forth in the above Opinion

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*[Handwritten Signature]*  
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Organization Member

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Carrier Member

Dated 6/20/2013