

PUBLIC LAW BOARD 6094

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

— and —

Kansas City Southern Railway Company

AWARD NO. 4  
CASE NO. 4

STATEMENT OF CLAIM:

Claim of Engineer B. K. Coles for wages, removal of FRA decertification from his record and personnel file be cleared of all charges.

FINDINGS:

This Public Law Board No. 6094 finds that the parties herein are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By letter dated January 6, 1997, the Carrier notified the Claimant, Engineer B. K. Coles that he had been assessed a sixty day actual suspension, of which thirty days were to be remedial training. The body of the letter stated:

Referencing the investigation that was held in the Conference Room, KCS Office Building, 3601 Spanish Trail, West Lake, LA, at 0900 hours, December 27, 1996, to ascertain the facts and determine your responsibility, if any, in connection with your alleged failure to exercise proper care and judgment in the handling of your train, No. 129, which resulted in the derailment of seven (7) empty box cars at Mile Post 687.4 on the Boise Lead in Luddington, LA at approximately 1700 hours, December 21, 1996, while you were serving as a crew member on the OMVT 36.

After thorough review of the transcript of this investigation, I find that you were in violation of 49 CFR 240.117(b), 49 CFR 240.117(e)(2), General Code of Operating Rule 6.28 and System Special Instructions, page 95 supplementing Rule 6.28.

Accordingly, for your violation of the above mentioned rules, you are hereby assessed 60 days actual suspension, retroactive from December 22, 1996, of which 30 days will be remedial training. You are to contact Larry Souter, Director of Safety, Rules and Operating Practices at (318) 676-6135 by January 17, 1997 for details of your remedial training.

Respectfully,

s/M. L. Erwin  
Superintendent of Terminals


The Organization appealed the matter, and it is now properly before this Board for adjudication.

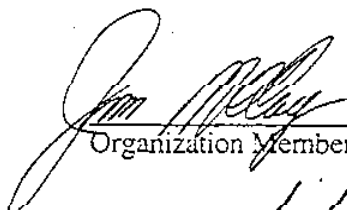
After full consideration of the entire record we are compelled to conclude that the discipline must be set aside because the transcript of the investigation was defective with some 200 remarks being inaudible and unable to be transcribed. Accordingly, the discipline assessed is set aside and all references to it shall be expunged from his record, and he shall receive backpay for the period of time he was withheld from service. The Organization's request to remove the revocation of Mr. Cole's locomotive engineer certificate from his record is a matter to be determined by the Locomotive Review Board. The Locomotive Review Board overturned the revocation of Mr. Cole's locomotive engineer certificate by decision dated February 19, 1998.

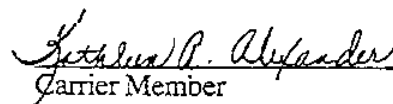
**AWARD**

Claim sustained.

ORDER: The Carrier is required to comply with this award within thirty days.

  
D.F. Twomey  
Chairman and Neutral Member

  
Organization Member

  
Carrier Member

DATE: 7/20/99