SPECIAL BOARD OF ADJUSTMENT NO. 894

Case No. 1668 Award No. 1668

PARTIES to DISPUTE: Brotherhood of Locomotive Engineers
-and-
Consolidated Rail Corporation

STATEMENT OF CLAIM:

Appeal of Engineer Mark J. Chebatoris to have his discipline of dismissal removed from his record and to be restored to the service.

FINDINGS: On September 8, 1998, the Claimant was directed to attend an investigation in connection with the following charges:

Charge #1 Your sleeping while on duty at approximately 8:15 AM on 9/6/98 at CP Homer on #1 Main Track, while you were assigned as engineer on Helper 401 assigned to train PIBA6, engine 6426.

Charge #2 You negated the alerter safety device by having the automatic brake handle in suppression position while you were assigned as stated above.

Subsequent to the investigation held on September 21, 1998, the Claimant was found guilty of the charges and he was dismissed from the service on September 25, 1998. This is the matter now before the Board for final and binding arbitration.

The relevant facts shows that on September 6, 1998, the Claimant was assigned as the Engineer on assigment Helper 401 at Pittsburg, Pa. When he reported for duty at 2:30 AM, he was instructed to shove train PIBA-6, east to Altoona, PA. According to the testimony at the investigation on September 21, Road Foreman, Hank Trybus ("Trybus") heard the Altoona Tower and the Engineer on Train PIBA-6 call the Claimant (who was on the rear-end of Train PIBA-6). Because the Claimant did not respond to either call, Trybus drove his car to the train. He testified that the Claimant was asleep, that his engine was in power and that the automatic brake was in suppression so to nullify the alerter.

The Board has carefully reviewed the transcript of the hearing held in this matter, the submissions of the parties and the supporting

evidence entered into the record. The Board finds that Trybus had a reasonable basis to conclude that the Claimant was sleeping. Moreover, the evidence is clear that he found the automatic brake valve in the suppression position instead of the full service position.

However, we also conclude that the Claimant was suffering from a medical condition that was not know to the Carrier's Medical Department on September 6, 1998 when this incident occurred. The Board reaches this conclusion primarily on the basis of three letters. The first letter, dated November 20, 1998, from Dr. Thomas Scott, in pertinent part, reads:

> The patient has a long psychiatric history including recently diagnosed bipolar disease which appears to be the correct diagnosis, and now is suffering from spells or neurologic dysfunction as described above. These are most likely either complex partial epilepsy spells or psychogenic fugue states.

The second letter, dated December 17, 1998, from Dr. Christopher Pash, in pertinent part, reads:

> Mr. Chebatoris has been seen in our office on multiple occasions for medical problems including hypertension, depression/anxiety and insomnia dating back to 1997. The patient had been having mood swings and was started on anti-anxiety/anti-depressant medications. During the course of treatment of the succeeding year, the patient had developed sleep disturbances characterized by daytime hypersomnolence as well as sleep continuity disturbance.

The third letter, from Dr. M. Patrick Gillespie, also dated December 20, 1998, states in part:

> I saw him for an evaluation on February 6, 1998. He reported fluctuating depression and normal or even elevated mood states which, with his history, supported the diagnosis of Bipolar Affective Disorder.

While one might argue that the Claimant's medical condition was unrelated to the brake valve handle being placed in the suppression position, the Board gives considerable weight to the Claimant's twenty-five years of operating with no previous operating rule violations. To set the brake valve in a position to nullify the safety feature is inconsistent with his past record.

In summary, the Board finds that there is a reasonable basis to conclude that the events leading to the Claimant's dismissal were caused by his medical condition. Accordingly, the Claimant is restored to the service with all benefits and rights, but without back pay subject, however, to a successful return-to-work physical and other restrictions that the Carrier's Medical Department finds necessary after its examination.

AWARD

As specified above.

S. R. Friedman	Eckehard Muessig	E. W. Rodzwicz
Carrier Member	Neutral Member	Organization Member

Dated: _____