SPECIAL BOARD OF ADJUSTMENT

NO. 997

CONSOLIDATED RAIL CORPORATION

-VS-

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DOCKET NO. CRE-16418-D
CASE NO. 64

CLAIMANT:	W.I. Swart
FOR THE CARRIER:	Jeffery H. Burton, Director Labor Relations
FOR THE ORGANIZATION:	Robert Godwin, General Chairman BLE
NEUTRAL:	Dr. James R. McDonnell

STATEMENT OF CLAIMS

System Docket CRE-16418-D
BLE File No. DE-E-46-659-92 (D)

"Appeal of Engineer W.I. Swart from the discipline of (15) days actual suspension assessed in connection with the following:

OUTLINE OF OFFENSE: Extreme negligence in operation of train ENBU-6 on April 17, 1992 at approximately 2:00 a.m. at the east end of Frontier, South Yard, South Lead and South #6 Track, Buffalo, NY, resulting in the derailment of cars CN 610313, CN 610357 and DWC 608628, while assigned as engineer on ENBU-6, on duty April 16, 1992 at 6:15 p.m.

FINDINGS

The Board, upon the whole record and all evidence finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended ("RLA"); that this Board is duly constituted by agreement and has jurisdiction of the parties, claim and subject matter which was held on June 7, 1993 in Philadelphia, Pennsylvania. The Board makes the following additional findings.

DISCUSSION

The instant claim has a striking similarity to Award No. 62, SBA, No. 997 CRE-16151-D, W.F. Kirkpatrick.

Before any consideration of the merits of the claim, procedural matters must first be explored.

The Board is troubled by the decision of the Carrier to remove the Claimant from service contrary to the provisions of Article G-m-11, Discipline and Investigation, which follows:

ARTICLE G-m-11 - DISCIPLINE AND INVESTIGATION

(a) Except as provided in paragraph (c), no engineer shall be disciplined, suspended or dismissed from the service until a fair and impartial formal investigation has been conducted by an authorized Corporation Officer.

(b)(1) Except when a serious act or occurrence is involved, an engineer shall not be held out of service in disciplinary matters before a formal investigation is conducted. A serious act or occurrence is defined as: Rule "G", Insubordination, Extreme Negligence, Stealing.

(2) If an engineer is held out of service before a formal investigation for other than a serious act or occurrence, he shall be paid what he would have earned on his assignment had he not been held out of service beginning with the day he is taken out of service and ending with the date the decision is rendered or he is returned to service, excluding whether or not he is disciplined. Holding an engineer out of service before a formal investigation or paying him for being out of service for less than a serious act or occurrence is not prejudicing him.

Moreover, the Board takes note of the definition of "Extreme Negligence" referred to in Article G-m-11 and expressed in G-m-11 Q&A #1, as follows:

G-m-11 Q&A #1

Q. Re (b) (1). What is meant by the term "Extreme Negligence?"

A. The right of Management to remove an engineer from service allegedly involved in extreme negligence must be used sparingly and duly conferred to transgressions of high risk or danger so that Management can say with justification that, notwithstanding the sanctity of the provisions of this Article, the protection of life and limb of affected employees and protection of Corporation property or property entrusted to custody of the Corporation, cry out or demand, the immediate removal of the engineer.

According to the Carrier's records the derailment of three cars on train ENBU-6 on April 17, 1992, at the Frontier Yard, Buffalo, New York took place at approximately 2:00 a.m. The evidence shows that he was removed from service by the Carrier at 8:35 a.m. on April 17, 1992, some six (6) and one half hours later.

Neutral David H. Brown, was equally troubled by the Carrier's removal of an engineer in the matter of SBA, No. 909, Award 83, May, 1988. He said, in part:

It appears to the undersigned neutral that this part of the agreement is being ignored with increasing frequency. The inevitable result of this practice is that with the engineer already removed from service there is undeniable pressure on management, including the officer conducting the investigation and the officer assessing discipline, to justify summary removal of the employee.

In all probability, the Claimant was negligent. It may well be that he deserved some form of discipline, but his negligence was not extreme as defined by contract language above. This matter should have been handled with the due process provided by the Agreement.

The removal of the Claimant from service at 8:35 a.m., on April 17, 1992 was arbitrary and capricious and in violation of G-m-11.

AWARD

Claim sustained.

The Claimant shall be paid for all time lost as a result of this incident, his benefits restored and the discipline expunged from his record.

Jeffery H. Burton, Director
Labor Relations

Robert Godwin, General Chairman
BLE

Dr. James R. McDonnell
Neutral

August 17, 1995
Date

jdm