

PLB No. 5065  
Case No. 2  
Award No. 2  
Page No. 1

PUBLIC LAW BOARD NO. 5065

CSX Transportation

AND

UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM

Request of Committee for removal of discipline entry from service record of R. L. Shafer, I.D. 1062938 (20 days suspension), pay for attending investigation , and pay for all time lost in connection therewith. (Date of incident 10/19/85). (Claim as stated by the Organization).

STATEMENT OF FACT

R. L. Shafer, Claimant, was performing service as a Brakeman on Train PHTT, D-4273 on October 18, 1985.

While passing a hot box indicator, the hot box indicator indicated that the 417th axle exceeded 270 degrees.

The train was stopped and the Claimant was instructed to inspect for the hot box.

The Claimant did not find the hot box but did find a stuck brake.

The train later derailed allegedly as a result of the 417th axle box being burned off.

An investigation was held on November 6, 1985 which resulted in the Claimant's being assessed a twenty (20) day actual suspension.

PLB No. 5065  
Case No. 2  
Award No. 2  
Page No. 2

The Carrier did not furnish to the Organization as required by their working Agreement a copy of the transcript of the investigation until six (6) days after the initial step of the grievance procedure. The record discloses that Carrier Officer had no explanation or knowledge of the reason for delay.

## DISCUSSION

This Board has considered the entire record in this case including the position papers and exhibits submitted by the Carrier and the Organization upon the Board's convening.

Upon this record, the Chairman and Neutral Member of the Board finds as follows:

1. That the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction.

2. That the Claimant did inspect the train as required by the rules. The Claimant did not find the 417th axle box which allegedly burned off resulting the derailment.

3. That the underlying issue in this case is whether the Claimant's discipline is mitigated by the failure of the Carrier to provide the Organization its copies of the transcript on a timely basis.

4. That it is fact that the transcript was not provided until November 6, 1985 after the initial step of the procedure.

5. That the language of the governing of the parties agreement is clear and unambiguous.

The Agreement Rule 17(e) reads as follows:

"Stenographic report will be taken of all hearings or investigations held under this rule and the employee involved or his representative shall be furnished with a copy of same. This will not change existing practice of divisions officers interrogating employees, while on duty for minor offenses. Employees' representatives may interrogate witnesses".

PLB No. 5065  
Case No. 2  
Award No. 2  
Page No. 3

6. That, while this language is clear and unambiguous, a question arises as to when the transcript is to be furnished. Further, a question arises as to the appropriate penalty for the failure of the Carrier to provide the employee and the Organization with such an important and significant document in advance of the initial appeal.

7. That the absence of the stenographic record of an investigation places a burden upon the employee and his representative that limits the ability and opportunity to prepare a proper defense based upon the best evidence available. The record of investigation being that record upon the Carrier is bound to use before making its determination of the appropriate discipline. This record and the testimony which it contains is clearly the only probative evidence available on which the parties must prepare their challenges in the event of an appeal of a disciplinary assessment.

8. That, in this case, the Claimant began his suspension from service on November 1, 1985 and the transcript was received by the Organization on November 6, 1985. The record does not disclose the reason for the delay in providing the transcript.

9. That this Neutral does not normally mitigate a disciplinary determination by a Carrier where the parties have followed the agreement procedures with reasonable intent and with explanation of any vagaries which might have occurred. Such is not the case here.

The record does not disclose an explanation for the delay even though it was a part of the Organization's pleadings.

10. That the Claimant was provided a fair and impartial hearing.

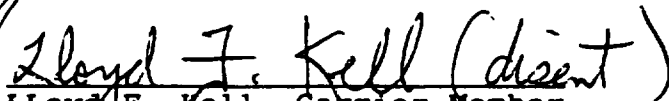
11. That the procedural defect of a delayed forwarding of the transcript of investigation is sufficient to overcome consideration of the potential effect upon the disciplinary process or intent of such process.

PLB No. 5065  
Case No. 2  
Award No. 2  
Page No. 4

AWARD

The claim is sustained in its entirety. The Carrier failed to submit the transcript of the record of investigation as required by the governing agreement and the practice of the parties.

  
\_\_\_\_\_  
Jack W. Cassle, Chairman and Neutral Member

  
\_\_\_\_\_  
Lloyd F. Kell, Carrier Member

  
\_\_\_\_\_  
J. T. Reed, Union Member

Original Signed By  
Jack W. Cassle