

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)
LOCOMOTIVE ENGINEERS)
AND TRAINMEN)

vs.)

ILLINOIS CENTRAL RAILROAD)

CASE NO. 101
AWARD NO. 101

STATEMENT OF CLAIM:

It is the General Committee's position that the Carrier erred in permanently dismissing Engineer Jeffrey Fields and we respectfully request that he be reinstated to service with all seniority rights unimpaired, all notations in connection with his discipline be removed from his personal work record and that he be compensated for all time lost from the day he was dismissed (June 16, 2015), including costs for health and welfare and restoration of all vacation entitlements as a result of same, plus the loss of earnings due to his attending the investigation.

FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Jeffrey Fields, was hired by the Carrier in 1996. On June 16, 2015, following an investigation, the Carrier determined that Claimant had violated numerous Carrier rules, regulations and/or policies when he was involved in a derailment and damage to NDYX 894359, OLNX 114032 and OLNX 116207, and damage to TILX 60062 and PROX 82945, in the Baton Rouge Yard on May 27, 2015 when he was the engineer on L56871-26. In consideration of this incident and Claimant's past disciplinary record, the Carrier dismissed him from service.

The facts of this case are not in dispute. On the day of the incident, Claimant, his conductor and his brakeman assembled a consist of 61 cars and pulled out of Formosa. The conductor asked if Claimant needed air, and Claimant replied that it was not necessary as they had two hours to get to the yard, and could just proceed slowly, at three to four miles per hour. The conductor testified that he always asks his engineer if he

needs air as a courtesy; he does not determine whether it is necessary. Claimant stated, and the conductor confirmed, that they stopped several times along the way and each time, the train stopped perfectly with just the engine brakes. Had there been any insufficiency, they maintained, they would have added air.

After arrival at the yard, the crew began to shove into Track 16, down a steep hill. The conductor gave car counts, and, while Claimant did not exceed the required speed going into the track, he realized that it began to increase. He applied the independent and started dropping sand, but the train did not slow and the speed increased to about seven or eight miles per hour. Claimant asked the conductor and brakeman to apply hand brakes, and each grabbed one. Claimant maintained that he did everything possible to stop, but could not. Three cars derailed, resulting in a sideswipe collision with equipment pulling into an adjacent track and damage to five cars.

Claimant acknowledged that he simply misjudged the hill going down Track 16, although he had made similar moves hundreds of times in his career with a similar number of cars. He also admitted that if they had put air on the cars he probably would have been able to stop.


Claimant's recent disciplinary record shows a letter of reprimand in 2012 for failure to wear proper PPE, a 10-day deferred suspension in 2012 for run-through switches, a 20-day actual suspension in 2013 for failure to perform a locomotive airbrake test, and a letter of reprimand in 2015 for an attendance violation.

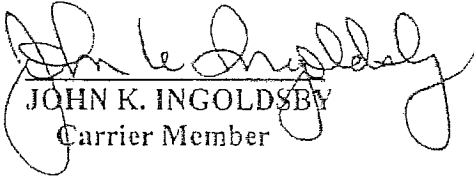
We have reviewed the record in its entirety. First, we find no procedural irregularity which denied Claimant his right to a fair and impartial investigation. On the merits, we agree with the Carrier that the record, including Claimant's testimony, clearly establishes that Claimant's judgment was flawed and he failed to take the safest course because, had he utilized the air brake mechanisms as necessary, the incident most likely would have been avoided. We also agree with the Carrier that although Claimant might have successfully operated without air on other occasions, this situation required additional braking capability, which Claimant chose not to apply notwithstanding his conductor's inquiry prior to the move.

With respect to the penalty of dismissal, the Carrier relies not only upon this incident, but also Claimant's previous record which, it asserts shows a pattern of negligence and failure to improve his performance. While we agree with the Carrier that Claimant's overall record supports the imposition of a very serious penalty, we find that the particular circumstances of this case mitigate against permanent dismissal. Claimant is a long-term employee who took full responsibility for the incident and clearly recognized that he had reached a critical point where he needed to take the safest course at all times. We therefore order him reinstated to employment, without backpay, and that his personal record be corrected accordingly.

AWARD

Claim sustained in accordance with Findings. The Carrier is directed to comply with this Award within 45 days.


JACALYN J. ZIMMERMAN
Neutral Member


JOHN K. INGOLDSBEY
Carrier Member

Marcus J. Ruef

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Date: 2016.12.09 14:43:39 -0500

MARCUS RUEF
Organization Member

Dated this 9th day of DEC, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)	
LOCOMOTIVE ENGINEERS)	
AND TRAINMEN)	
	)	CASE NO. 102
vs.	)	AWARD NO. 102
)	
ILLINOIS CENTRAL RAILROAD)	

STATEMENT OF CLAIM:

We respectfully request that the Carrier reverse its error and correct this grave injustice by reinstating Engineer Marcus Williams to service with all seniority rights unimpaired, all notations in connection with his discipline be removed from his personal work record and that he be compensated for all time lost from the day he was dismissed (July 2, 2015), until the date he resumes service, including costs for health and welfare and restoration of all vacation entitlements as a result of same, plus the loss of earnings due to his attending the June 24, 2015 investigation

FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Marcus Williams, had been employed by the Carrier since 1998. On June 17, 2015, the Carrier notified Claimant to attend an investigation to develop the facts and determine his responsibility, if any, in connection with whether he violated the Carrier's Attendance Guidelines during the 12-week period prior to June 13, 2015.

The Guidelines provide that an employee may be subject to discipline if, within a 12-week period, he has unexcused absences as follows: 1) More than two occurrences of any duration; 2) More than three total work days missed; or 3) More than one occurrence on a holiday or immediately before or after a holiday, rest day, personal leave day, vacation day, or Family Medical Leave Act (FMLA) day.

The Carrier charged Claimant with unexcused absences on March 31, 2015, following a vacation day, on April 27, 2015, and on June 13, 2015, before a rest day.

Following the investigation, the Carrier found that Claimant had violated the Attendance Policy as alleged and, given his overall record, dismissed him from employment.

The parties have been engaged in an ongoing dispute concerning the application of the Attendance Policy, as the Organization contends that Article 32—Leave of Absence, Section 1 A. of the parties' Agreement precludes the Carrier from disciplining employees who miss work because they are ill. It provides, "Engineers shall not be expected to work when sick, but in case of being compelled to lay off on account of sickness of themselves, or family should in some manner notify the proper authority of their inability to protect the service requirements of the Company." The Carrier states that although the agreement language addresses the fact that employees may lay off for illness, it does not mean that employees are immune from discipline for such unauthorized layoffs, as the Carrier provides employees with authorized time off and other means of obtaining excused leave to address illness.

At the investigation, Claimant maintained that he came to work on June 12, 2015, even though he was feeling ill, because he did not want to risk discipline. Sometime around midnight, two Carrier officers transported him to a local hospital emergency room. He testified that a doctor told him he had stroke-level high blood pressure, but this information was not provided the two Carrier officers. At some point, they left the hospital and it appears that Claimant left a while later. The next day, he laid off sick and faxed the Carrier a note he had received the evening before from the University of Mississippi Medical Center. It appears to be a form document. It had Claimant's name, date of birth and date of visit filled in and stated, in its entirety, "To Whom It May Concern: Marcus Williams was seen and treated in our emergency department on 6/12/2015. He may return to work/school on 6/15/2015. If you have any questions or concerns, please don't hesitate to call." There is no visible signature on the document attached to the hearing record. June 14 and June 15 were Claimant's rest days.

During the investigation, Claimant never stated that he was ill on June 13. He did not request a personal leave or vacation day because, he maintained, the hospital note granted him an excused absence. Claimant offered no explanation for his other two unexcused absences during the time period covered by this discipline; it appears that he simply called the Attendance Management Center and marked off.

Prior to the incident in this case, the Carrier, on September 8, 2014, issued Claimant a five-day deferred suspension for violation of the Attendance Guidelines. On December 18, 2014, he received 15-day actual and 30-day deferred suspensions, as well as activation of the previous deferred suspension, for further violation of the Attendance Guidelines. That discipline is the subject of a claim before this Board in Case No. 99. The record in that case shows that Claimant took unexcused absences on November 26 and 27, 2014, immediately following the Thanksgiving holiday, and on December 16, 17 and 18, 2014, the week before Christmas. At that investigation, he contended that the first absences were necessary for him to care for his disabled daughter, and for the second set of dates he presented a form note from a medical clinic, with Claimant's name filled

in, the line stating he had been seen in the office filled in with December 16, 2014, and the "will be able to return to work" line filled in as December 19, 2014.

As stated above, although the Carrier and Organization disagree about the impact of the Article 32 language on the Attendance Policy, it is well established that the Carrier has the right to expect regular attendance from its employees. It is clear that the Carrier could not function effectively if employees could mark off at will, without repercussion, simply by declaring themselves sick.

In this case, that is essentially what Claimant did. In Case No. 99, he simply took two blocks of unexcused time very close to holidays. For one, he declared, without any support, that his daughter was ill. For the other, he provided a form note that could be easily obtained in many medical offices, which did not even state that he was ill or provide any information about why he was supposedly unable to work. For those violations, the Carrier assessed him heavy discipline.

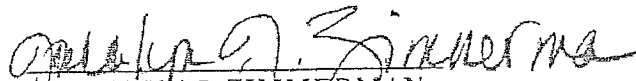
While that discipline was pending in the arbitration process, Claimant engaged in the conduct in this case, which led to his dismissal. For the first two unexcused absences he offered no explanation at all. For the third, where he felt ill at work and Carrier Officers transported him to an emergency room, he contended without supporting documentation, that he had high blood pressure but offered no explanation for his absence the next day, the only one for which he was disciplined. He did not assert that he was ill that day or explain why he could not come to work; he simply relied upon the form he had obtained at the hospital, which included no information about his condition or treatment, as granting him excused time off.

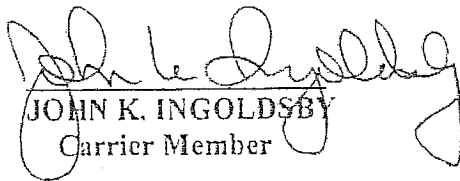
In our view, the Carrier clearly met its burden of proving Claimant guilty of the asserted violations of the Attendance Guidelines. Claimant either marked off without explanation, or with supposed documentation so light as to be of no value in assessing his situation. He was on notice that he needed to avoid such situations but he did not. The Carrier was justified in determining that severe discipline was warranted.

However, there are circumstances in this particular case which mitigate against permanent dismissal. We note that Claimant is a long-term employee who never had an attendance violation until the three, clustered closely together, which resulted in this dismissal. This suggests that the situation may well have been caused by some issues in his personal life. If that was the case, Claimant bore responsibility for bringing the matter to his employer and attempting to work out a resolution, rather than simply marking off, and it was not unreasonable for the Carrier to assess serious discipline for his repeated violations of the Attendance Policy. However, especially as the Carrier was aware on June 12, the day before Claimant's last violation, of a potential legitimate problem, we find it appropriate, under these limited circumstances, to return Claimant to the Carrier's employment. That reinstatement will be without backpay, and Claimant's personal record shall be corrected accordingly.

AWARD

Claim sustained in accordance with Findings. The Carrier is directed to comply with this Award within 45 days.


WACALYN J. ZIMMERMAN
Neutral Member


JOHN K. INGOLDSBY
Carrier Member

Marcus J. Ruef

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MARCUS RUEF
Organization Member

Dated this 9th day of DEC, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)	
LOCOMOTIVE ENGINEERS)	
AND TRAINMEN)	
	)	CASE NO. 103
vs.	)	AWARD NO. 103
)	
ILLINOIS CENTRAL RAILROAD)	

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Shawn Muller for removal of unwarranted discipline of twenty-five (25) days actual suspension that was served March 31, 2015—April 24, 2015 that Engineer Muller received from an investigation held on March 18, 2015 in connection with allegedly violating Attendance Management Center Guidelines indicating his absence on 11/15/14, 11/17/14, 11/18/14, 11/19/14 and 01/01/15 when considered with other absences during the 12 weeks including and immediately preceding February 1, 2015 that may be in violation of requirements of the Attendance Guidelines. We respectfully request that Engineer Muller be compensated for all time lost for twenty-five (25) days suspension, plus one (1) additional day for attending March 18, 2015 investigation.

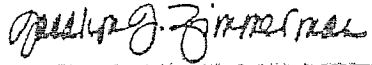
FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. However, we find that the Carrier's application of progressive discipline in this matter resulted in the assessment of an excessive penalty. We therefore reduce the discipline from a 20-day to a 10-day actual suspension which, with the activation of a previously deferred suspension, results in a 15-day actual suspension. Claimant shall be made whole for the additional time in accordance with the prevailing practices on this property and his personal record shall be corrected accordingly.

AWARD

Claim sustained in accordance with Findings. The Carrier is directed to comply with this Award within 45 days.



JACALYN J. ZIMMERMAN
Neutral Member



JOHN K. INGOLDSBY
Carrier Member

Marcus J. Ruef Digitally signed by Marcus J. Ruef
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MARCUS RUEF
Organization Member

Dated this 9th day of DEC, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)	
LOCOMOTIVE ENGINEERS)	
AND TRAINMEN)	
	)	CASE NO. 104
vs.	)	AWARD NO. 104
)	
ILLINOIS CENTRAL RAILROAD)	

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Steven Voss for removal of unwarranted discipline of thirty (30) days actual suspension that was served April 1, 2015—April 30, 2015 that Engineer Voss received from an investigation held on March 19, 2015 in connection with allegedly being observed violating multiple rules during efficiency testing while switching at Sioux City, IA between the hours of 11:00 and 12:15 on Wednesday, February 11, 2015 while working as Engineer on assignment R9991-10. We respectfully request that Engineer Voss be compensated for all time lost for thirty (30) days suspension, plus one (1) additional day for attending March 19, 2015 investigation.

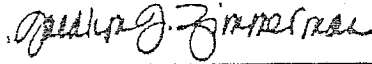
FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

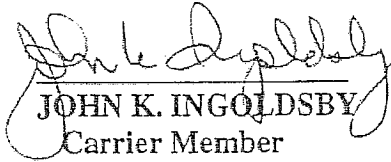
We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. We see no reason to disturb the penalty determined appropriate by the Carrier.

AWARD

Claim denied.



JACALYN J. ZIMMERMAN
Neutral Member


JOHN K. INGOLDSBY
Carrier Member

Marcus J. Ruef

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MARCUS RUEF
Organization Member

Dated this *9th* day of DEC , 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)	
LOCOMOTIVE ENGINEERS)	
AND TRAINMEN)	
	)	CASE NO. 105
vs.	)	AWARD NO. 105
)	
ILLINOIS CENTRAL RAILROAD)	

STATEMENT OF CLAIM:

Appealing the unwarranted discipline of forty-five (45) days of CN/IC Engineer Franklin Morris, Jr., PIN #150470 for the alleged violation of ABTH Rule 108—Class III Trainline Continuity Inspection in connection with allegedly failing to perform Class III brake test when working job assignment M34581-18 at or near Stevens Point Yard at approximately 0011 hours, March 18, 2015.

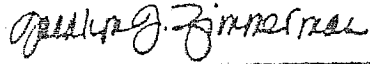
FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

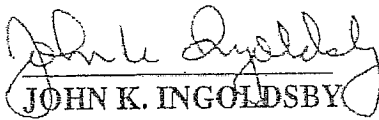
We have carefully reviewed the record in its entirety. We find merit in the Organization's procedural objections concerning the Investigation Notice and sustain the claim on that basis.

AWARD

Claim sustained. The Carrier is order to rescind the discipline issued to Claimant, to make him whole for his losses, if any, in accordance with the usual practices on this property, and to correct his personal record accordingly. The Carrier is directed to comply with this Award within 45 days.



JACALYN J. ZIMMERMAN
Neutral Member


JOHN K. INGOLDSBY
Carrier Member

Marcus J. Ruef

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MARCUS RUEF
Organization Member

Dated this 9th day of DEC, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)	
LOCOMOTIVE ENGINEERS)	
AND TRAINMEN)	
	)	CASE NO. 106
vs.	)	AWARD NO. 106
)	
ILLINOIS CENTRAL RAILROAD)	

STATEMENT OF CLAIM:

Appealing the unwarranted discipline of sixty (60) days actual suspension from service (April 29, 2015 through and including June 27, 2015) assessed to Engineer James Wilson, PIN #143597 in connection with allegedly missing a call and failing to protect assignment R91671-26 at approximately 0845 hours, on Sunday, April 26, 2015 at Memphis, Tennessee while subject to call.

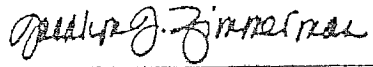
FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

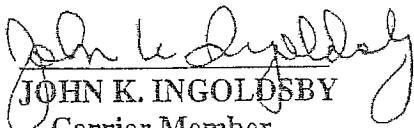
We have carefully reviewed the record in its entirety. We agree with the Organization's argument that the Carrier violated Article 29 A of the Agreement by removing Claimant from service on April 29, 2015, prior to the hearing, which was not held until May 5, 2015. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. We reduce the penalty assessed against Claimant to a 53-day actual suspension, from May 6, 2015 through June 27, 2015, to compensate for the procedural error.

AWARD

Claim sustained in accordance with Findings. The Carrier shall make Claimant whole for seven days in accordance with the prevailing practices on this property and shall adjust his personal record accordingly. The Carrier is directed to comply with this Award within 45 days.



JACALYN J. ZIMMERMAN
Neutral Member


JOHN K. INGOLDSBY
Carrier Member

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MARCUS RUEF
Organization Member

Dated this 9th day of DEC , 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)
LOCOMOTIVE ENGINEERS)
AND TRAINMEN)

vs.)

ILLINOIS CENTRAL RAILROAD)
COMPANY)

CASE NO. 107
AWARD NO. 107

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Franklin Morris Jr. for removal of discipline assessed on August 5, 2015, immediate reinstatement to service with seniority and vacation rights unimpaired, pay for all time lost from date out of service to the date back working, and including but not limited to out of pocket expenses for Health and Welfare, plus any other benefits which would be provided to him as a CN/IC locomotive engineer, for the alleged violation of rules, regulations and/or policies in connection with information indicating that his absence on June 14, 2015, when considered with the 12 weeks including and immediately preceding June 14, 2015, may be in violation of requirements of Attendance Guidelines (Both the Notice of Investigation and the Carrier's August 5, 2015 discipline letter) contained sentence stating "with the field first gaining knowledge on July 11, 2015".

FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Franklin Morris Jr., had been employed by the Carrier since 2008. In a letter to him dated July 14, 2015, the Carrier stated that a formal investigation would be conducted on July 21, 2015, to develop the facts and determine Claimant's responsibility, if any, and whether he violated any Carrier rules, regulations or policies in connection with information indicating that his absence on June 14, 2015, when considered with the 12 weeks including and immediately preceding June 14, 2015, might violate the Carrier's Attendance Guidelines. The letter indicated that it was copied to Tom Bloom, the Organization's local representative.

The investigation was held as scheduled on July 21, 2015, with neither Claimant nor his representative present. On August 5, 2015, the Carrier found that Claimant had been absent as alleged, in violation of System Bulletin Notice No. 4—Attendance Management Center and Guidelines for US Unionized Employees; USOR—General Rule I—Duty Reporting or Absence—and USOR—Rule 0100—Rules, Regulations and Instructions. The Carrier dismissed him from service.

We have carefully reviewed the record in its entirety. The Organization argues that the discipline assessed against Claimant must be overturned because he was denied his right to a fair and impartial investigation. For the following reasons, we agree.

While the Organization argues that neither Claimant nor his representative received proper notice of the scheduled investigation, the record, as the Carrier states, includes a United States Postal Service tracking record indicating that the Carrier mailed the Investigation Notice on July 15, 2015, presumably to the address Claimant has on file with the Carrier, and, on July 17, 2015, the USPS left a notice indicating that delivery had been attempted and the intended recipient could re-schedule delivery or pick up the item at the Post Office indicated on the notice. This is, as the Carrier states, sufficient notice to Claimant, even if he did not claim the item.

However, at the opening of the hearing, after Carrier witness Trainmaster Allan Danielwicz introduced the USPS certified mail tracking record, the Hearing Officer asked Mr. Danielwicz if he was aware of Claimant's whereabouts. Mr. Danielwicz replied that he was operating a train. The Hearing Officer then asked if Claimant was aware of the investigation, and Mr. Danielwicz replied that he was, as they had discussed it. The Hearing Officer then asked Mr. Danielwicz if local Organization representative Mr. Bloom was aware of the investigation. Mr. Danielwicz replied that he was, as he had responded to an e-mail from Carrier official Nicole Manso, which indicated the investigation date. The e-mail was not entered into the hearing record. Only then did the Hearing Officer proceed on the merits.

The Organization attached the e-mail to its on-property appeal and to its submission to this Board. The e-mail provides:

Mr. Bloom to Ms. Manso, July 20, 2015, 5:24 p.m.

I haven't heard anything at all from Mr. Morris on this. He must be handling this on his own. I sure won't be able to be there.

Mr. Bloom to Ms. Manso, 10:07 p.m.

I just talked to Franklin at 2200 and he said he was never notified by mail or the crew caller of this investigation. I am sorry for this late notice **but we will have to postpone for tomorrow** (emphasis added).

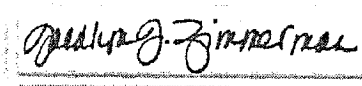
Our review of the record indicates that the Hearing Officer was concerned about proceeding with neither Claimant nor his representative present, and he questioned Mr. Danielwicz about each to make sure they were aware of the investigation and had chosen not to attend.

While the certified mail record demonstrates that the Carrier met its notice requirements to Claimant, Mr. Danielwicz never mentioned Mr. Bloom's statement that he had not learned about the investigation until late the previous day, nor did he mention Mr. Bloom's request that the investigation be postponed. He therefore misled the Hearing Officer about Mr. Bloom's willingness to have the investigation proceed without himself and/or Claimant present. He denied the Hearing Officer the opportunity to determine if a postponement was warranted so that the proceedings would not have to be held *in absentia*.


As a result of Mr. Danielwicz' actions, the Carrier denied Claimant his right to a fair and impartial investigation. The claim will be sustained on that basis. The Carrier shall reinstate Claimant to his position, make him whole for his losses in accordance with the prevailing practices on this property, and correct his personal record accordingly.

AWARD

Claim sustained. The Carrier will comply with this Award within 45 days.



JACALYN J. ZIMMERMAN
Neutral Member



JOHN K. INGOLDSBY
Carrier Member

Marcus J
Ruef

MARCUS RUEF
Organization Member

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Dated this 4TH day of August, 2017.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)	
LOCOMOTIVE ENGINEERS)	
AND TRAINMEN)	
	)	CASE NO. 108
vs.	)	AWARD NO. 108
)	
ILLINOIS CENTRAL RAILROAD)	
COMPANY)	

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Daniel Shepherd for immediate reinstatement to service and compensation for all time lost from the date he was wrongfully withheld from service (July 26, 2015) being ultimately Dismissed on August 25, 2015 until the date he returns to service with all seniority rights unimpaired and all notations in connection with this unwarranted discipline expunged from his personal work record. Additionally, this claim includes any out of pocket expense for Health and Welfare and any other benefit he would have been entitled to, such as but not limited to, Personal Leave entitlements, vacation entitlements, etc., that he would have received as being an active employed Locomotive Engineer for the CN/IC Railroad for being wrongfully dismissed for the alleged violation of USOR General Rule I—Duty Reporting or Absence, when called at 0915 Hours on July 26, 2015 for L57791-26.

FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Daniel Shepard, had been employed by the Carrier since 2004. On July 27, 2015, the Carrier charged Claimant to attend an investigation to determine his if he protected his assignment when called for duty for 0915 hours on July 26, 2015 for the L57791-26 and if any rules, policies or instructions were violated in connection therewith. Following the investigation, the Carrier found Claimant guilty of the misconduct alleged, in violation of General Rule I—Duty Reporting or Absence—and dismissed him from service.

The facts of this case are not in dispute. On the morning of July 26, 2015, a member of the Carrier's Crew Management Center (CMC) called Claimant and instructed him to report for job L57791-26, on duty at 9:15 a.m. Claimant's usual assignment was L573. Claimant told the crew caller he would only accept a call for his own assignment.

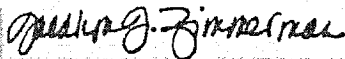
We have carefully reviewed the record in its entirety. First, despite the Organization's assertions, we find no procedural violation which denied Claimant his right to a fair and impartial investigation. On the merits, the record is clear that Claimant refused to accept the call for job L57791-26. Claimant and the Organization contend that his action was justified because the parties' Agreement did not require him to take the call.

Whatever the merits of the parties' respective arguments concerning the proper interpretation of the Carrier's Rules and the parties' Agreement, it is well established, as the Carrier argues, that, with limited exceptions not applicable here, an employee may not refuse his Employer's directives based upon his understanding of the collective bargaining agreement. Rather, the employee must follow the instructions, and avail himself of the grievance procedures available in his contract to correct any perceived contract violations. Claimant was therefore not justified in declining to take the call. The Carrier has proven his guilt of failing to protect his assignment by substantial evidence.

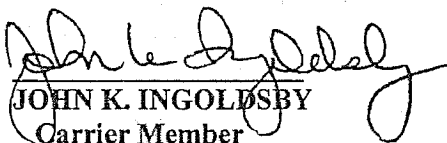
However, we find, under the particular circumstances of this case, that the penalty of dismissal is too harsh. We order Claimant reinstated to his position, without backpay, and that his personal record be corrected accordingly

AWARD

Claim sustained in accordance with Findings. The Carrier is directed to comply with this Award within 45 days.



JACALYN J. ZIMMERMAN
Neutral Member



JOHN K. INGOLDSBY
Carrier Member

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MARCUS RUFF
Organization Member

Dated this 4TH day of August, 2017.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)	
LOCOMOTIVE ENGINEERS)	
AND TRAINMEN)	
	)	CASE NO. 109
vs.	)	AWARD NO. 109
)	
ILLINOIS CENTRAL RAILROAD)	
COMPANY)	

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Franklin Morris Jr. for reinstatement to service with seniority and vacation rights unimpaired, all notations of discipline assessed on August 18, 2015 expunged from his personal work record and compensation for all time lost, as a result of same until the date he resumes service, plus out of pocket expenses for health and welfare and any other benefits which would be provided to him as being an active employed CN/IC Locomotive Engineer.

FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Franklin Morris Jr., had been employed by the Carrier since 2008. On July 24, 2015, the Carrier notified Claimant to attend a formal investigation to develop the facts and determine Claimant's responsibility, if any, and whether he violated any Carrier rules, regulations or policies in connection with information indicating that his absence on July 1, 2015, when considered with the 12 weeks including and immediately preceding July 1, 2015, might violate the Carrier's Attendance Guidelines. On August 18, 2015, following the investigation, the Carrier found that Claimant had been absent as alleged, in violation of System Bulletin Notice No. 4—Attendance Management Center and Guidelines for US Unionized Employees; USOR—General Rule I—Duty Reporting or Absence—and USOR—Rule 0100—Rules, Regulations and Instructions. The Carrier dismissed him from service.

On the merits, the record shows, as he admitted, that Claimant was absent without authorization on May 30, 2015, and on June 8, 2015, June 14, 2015 and July 1, 2015. Claimant had a Family Medical Leave Act (FMLA) request pending for the latter three dates, but the Carrier denied it, on July 10, 2015, because Claimant had failed to provide the required provider certification. At that point, the Carrier deemed these absences unexcused, triggering an investigation for a violation of the Attendance Guidelines, which prohibit more than two unexcused absence occurrences, or more than three total work days missed, with a 12-week period.

Claimant testified at the hearing that on May 30, 2015 he had the flu and was unable to come to work. He stated that he suffered from diabetes which sometimes prevented him from operating a train safely, and that the latter three instances were related to that illness and visits to medical facilities to address it.

The Organization first argues strongly that Claimant should not have been disciplined because the Carrier subjected him to "double jeopardy" by including May 30, June 8, 2015 and June 15, 2015 to support its action, as Claimant was disciplined for those dates in Case No. 107 before this Board. As we have sustained the claim in that matter on procedural grounds, the double jeopardy argument is moot as this is now the only case in which those dates have been used to establish an Attendance Guidelines violation.

On the merits, the Organization argues strongly that Claimant should not have been disciplined because he was ill, as demonstrated by his request for FMLA leave. The Carrier responds that it is well established in this industry that absence, even if for legitimate purposes, may be considered excessive, as the Carrier has the right, necessary for its operations, to depend upon its employees for regular attendance. The Carrier disputes the Organization's assertion that Article 32 of the parties' agreement, which addresses layoffs for sickness, affords trainmen a right to be absent without consequence for asserted illness. That position, it stresses, was rejected in a controlling award of this Board in PLB 7559, Case No. 35, which held that Article 32 must be read in conjunction with USOR Rule I, which requires employees to work regularly and without excessive layoffs and absences.

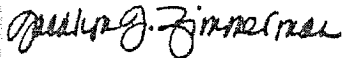
The record is clear that Claimant was absent without proper authorization on the dates alleged, and that those absences indeed violated the Attendance Guidelines. As for his FMLA request, he did not contest the Carrier's assertion that his medical provider failed to submit the necessary certifications for him to obtain such leave. His guilt has been proven by substantial evidence.

With respect to the penalty, we first note that a 45-day suspension for an operating offense, assessed against Claimant on March 20, 2015, was overturned by this Board, in Case No. 105, on December 9, 2015. As stated above, we also overturned the dismissal issued against Claimant in Case No. 107. As a result, the last two disciplinary actions on Claimant's record are a letter of reprimand for an attendance violation,

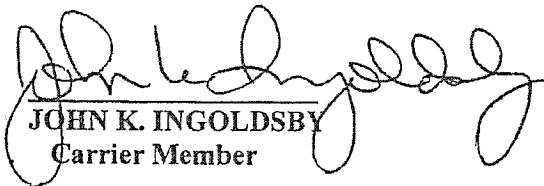
effective March 9, 2015, and a five-day deferred suspension effective July 2, 2015, for failure to protect his job assignment. The progression to dismissal for an attendance violation is excessive. It will be reduced to a 20-day actual suspension. We order Claimant reinstated, made whole for his losses in excess of 20 days in accordance with the prevailing practices in effect on this property, and that his personal record be amended accordingly.

AWARD

Claim sustained in accordance with Findings. The Carrier will comply with this Award within 45 days.



JACALYN J. ZIMMERMAN
Neutral Member



JOHN K. INGOLDSBY
Carrier Member

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MARCUS RUEF
Organization Member

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Dated this 4TH day of August, 2017.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)	
LOCOMOTIVE ENGINEERS)	
AND TRAINMEN)	
	)	CASE NO. 110
vs.	)	AWARD NO. 110
)	
ILLINOIS CENTRAL RAILROAD)	
COMPANY)	

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Todd Macak for removal of dismissal assessed on September 8, 2015, claiming payment for all lost time, including pay lost while wrongfully withheld from service, immediate employee reinstatement and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include all wage equivalent to which he is entitled, Railroad Retirement credits restored, including all costs for health and welfare benefits, and loss of such benefits during the time of dismissal. The claim also includes that Claimant's return to service with seniority unimpaired, and restoration of all vacation entitlements, PLD entitlements, and any benefits he would have received working as an active Locomotive Engineer for the CN/IC Railroad.

FINDINGS:

Public Law Board No. 7559, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Todd Macak, had been employed by the Carrier since 1997. On August 21, 2015, the Carrier charged Claimant to attend an investigation to develop the facts and determine his responsibility, if any, and whether he violated any Carrier rules, regulations and/or policies in connection with whether or not he was using a personal electronic device at approximately 1920 hours on August 20, 2015 while working as a crew member of M37161-19. Following the investigation, the Carrier found Claimant guilty of the misconduct alleged, in violation of USOR—General Rule P—Employee Conduct;

USOR Rule 0100—Rules, Regulations and Instructions; and USOR—Rule L—Communication and Electronic Devices. The Carrier dismissed him from employment.

The underlying facts of this case are not in dispute. On August 20, 2015, Claimant was the engineer on train M37161-19, and Carrier Trainmasters Stephen Hyatt and Tony Randell were performing efficiency testing on Claimant and his conductor. At about 9:15 a.m., Claimant had his train stopped in the siding at Tolono, in anticipation of a three-way train meet. A southbound Amtrak train was also in the siding, and a northbound Amtrak train was to pass Claimant's train on the main line. Once that train cleared, the southbound Amtrak was to back out of the siding and proceed south on the main line, while Claimant's train waited in the siding.

While Claimant and his conductor came down from their train to perform a roll-by inspection of the northbound train, they did not do so for the southbound train. Rather, Mr. Hyatt testified at the investigation, he observed the engineer still in the cab of the locomotive, and could see him holding a cell phone, on which he appeared to be texting. He stated that the engineer had not seen them and put his phone on his lap and started to move the train. Mr. Hyatt radioed for the crew to stop, and then he and Mr. Randell boarded the train.

Claimant, Mr. Hyatt added, admitted he had been using his phone, claiming he had trouble at home and needed to check. Claimant told him he then turned the phone off and put it in his grip.

Mr. Hyatt explained that the applicable Rule, USOR—L, Communication and Electronic Devices provides, in relevant part, that the use of personal electronic devices is prohibited by operating employees while they are on duty unless authorized by the Carrier or in the case of an emergency, but this restriction does not apply if the employee is relieved of responsibility for the train during a break or other duties when the train is properly secured or is the responsibility of another crew. None of these exceptions, he stated, applied to Claimant at the time. He also stated that the Carrier maintains an emergency hotline for families to contact employees in case of emergency so they will not need to use their personal cell phones in violation of the applicable Rule.

Mr. Hyatt also testified that Claimant never told him there was an emergency; he simply stated that there were some issues at home, and he needed to find out what was going on.

Claimant acknowledged at the investigation that he was using his personal cell phone at the time at issue. He further acknowledged that he was aware of the Rule governing use of personal electronic devices. He explained that he had an issue at home when he left for work, and he checked on it in the yard office when he arrived at work. At the time he was observed by Mr. Hyatt, he stated, they were stopped and he was not performing any duties so he thought it would be "a good opportunity" to see if things at home had improved. He acknowledged that he was not on a break, and was in the

performance of his duties at that time. He admitted that the train was not secured, because no hand brakes had been set, and the train was not any other crew's responsibility.

Claimant stated that he considered his situation an emergency, because his wife had health issues, although she did not receive any emergency medical treatment. He stated that he keeps his grip within arm's length so he does not have to get up to retrieve it, and that is where he put the phone after he sent the text. He maintained that he never used the phone on a moving train.

We have carefully reviewed the record in its entirety. First, we find no procedural violation which denied Claimant his right to a fair and impartial investigation. On the merits, his Rule violation is clear. Claimant was on duty and waiting to perform a roll-by, which he in fact failed to perform as required, when he decided that it was an opportune time to check in on his wife, who apparently had not been feeling well. Under no reasonable interpretation of the term could this be deemed an emergency of any sort, railroad or personal. Simply put, Claimant was aware of the Rule's requirements and simply chose to ignore them. His guilt has been proven by substantial evidence.

The Organization argues that the Carrier's decision to dismiss Claimant for this violation conflicts with the principles of progressive discipline, as he was assessed a 45-day suspension for failure to perform the roll-by, and the Carrier took this action for the cell phone violation which was discovered minutes later. Therefore, the Organization asserts, Claimant had no opportunity to correct his behavior.

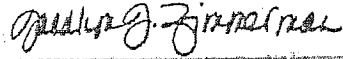
We disagree. This was not a case where an employee failed in some way to properly perform his duties and needed notice and an opportunity to correct his behavior. Here there were two separate, unrelated incidents. The discipline for the roll-by would have had no impact on Claimant's decision to deliberately violate a clear Rule, of which he admitted he was aware.

The Rule at issue is a serious one, and its safety objectives are obvious. Given the nature of this offense, and Claimant's disciplinary history, we cannot say that the Carrier's determination that dismissal is warranted represents an unfair, arbitrary or discriminatory exercise of its discretion to determine penalties.

AWARD

AWARD

Claim denied.



JACALYN J. ZIMMERMAN
Neutral Member



JOHN K. INGOLDSBY
Carrier Member

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MARCUS RUEF
Organization Member

Dated this 4TH day of August, 2017.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)	
LOCOMOTIVE ENGINEERS)	
AND TRAINMEN)	
	)	CASE NO. 111
vs.	)	AWARD NO. 111
)	
ILLINOIS CENTRAL RAILROAD)	
COMPANY)	

STATEMENT OF CLAIM:

Appealing the Carrier's dismissal assessed to employee Engineer Scott Miller on November 2, 2015, claiming payment for all lost time including pay lost while wrongfully withheld from service prior to the hearing, immediate employee reinstatement, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include all wage equivalent to which he is entitled, and Railroad Retirement credits, including all costs for health and welfare benefits, and loss of such benefits during the time of dismissal. The claim also includes that Claimant's return to service with seniority unimpaired, and restoration of all vacation entitlements, personal leave entitlements and any benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad.

FINDINGS:

Public Law Board No. 7559, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Scott Miller, had been employed by the Carrier since 2008. On October 16, 2015, the Carrier charged Claimant to attend an investigation to develop the facts and determine his responsibility, if any, and whether he violated any Carrier rules, regulations or policies in connection with allegedly failing to contact Foreman Benson before entering the planned work located between MP 182 and MP 182.5 on the Dubuque Subdivision at approximately 0952 hours, October 14, 2015 while working U70492-13 in Dubuque, Iowa. Following the investigation, the Carrier found Claimant guilty of the

misconduct alleged, in violation of USOR—Rule 1102—Planned Work—and dismissed him from service.

The facts of this case are not in dispute. Claimant acknowledged at the investigation that on October 24, 2015, while he was the engineer on train U70492-13, he operated his train into a planned work on the Dubuque Subdivision without stopping and notifying the employee in charge of that work area that he planned to do so.

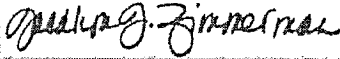
Claimant also acknowledged at the investigation that he was aware of the planned work area from documentation provided before he began work that day, and that he and his conductor had conducted a job briefing in which they discussed the necessity of talking to the employee in charge, Foreman Benson, before entering the designated area. He also acknowledged that he entered the planned work area without first contacting Foreman Benson.

Contrary to the Organization's assertions, we find no procedural error which denied Claimant his right to a fair and impartial investigation. On the merits, Claimant's violation of the applicable Rules is clear. He is an experienced engineer, and while, as the Organization argues, additional flags might have reminded him of the planned work area ahead, he was well aware of its existence and should not have needed reminders before complying with such an important Rule, in place to guarantee the safety of employees working on the track. The Carrier has proven his guilt by substantial evidence.

With respect to the penalty, the Organization argues strongly that it is excessive, and points to the fact that Claimant's conductor was assessed only a 30-day suspension. However, the record shows that the conductor had been on the job for only two years and, as this was his first offense, he was offered, and accepted, a waiver. Claimant had been employed substantially longer, and, as the Carrier points out, has a disciplinary history of operating offenses, including one similar to the instant one. Given the nature of this offense, and that history, we cannot say that the Carrier's determination that dismissal is warranted represents an unfair, arbitrary or discriminatory exercise of its discretion to determine penalties.

AWARD

Claim denied.



JACALYN J. ZIMMERMAN
Neutral Member



JOHN K. INGOLDSBY
Carrier Member

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MARCUS RUEF
Organization Member

Dated this 4th day of August, 2017.



PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)	
LOCOMOTIVE ENGINEERS)	
AND TRAINMEN)	
	)	CASE NO. 112
vs.	)	AWARD NO. 112
)	
ILLINOIS CENTRAL RAILROAD)	
COMPANY)	

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Todd Macak for removal of unwarranted discipline of forty-five (45) days actual suspension assessed on September 8, 2015 from his personal work record and compensation for all time lost, including the time unwarrantedly withheld from service (August 20, 2015) prior to the hearing and any other benefit he would have been entitled working as an active locomotive Engineer for the CN/IC Railroad. This claim is in reference to the alleged violation USOR—Rule 100, USOR Rule—0104 and USOR Rule—523.

FINDINGS:

Public Law Board No. 7559, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Todd Macak, had been employed by the Carrier since 1997. On August 21, 2015, the Carrier charged Claimant to attend an investigation to develop the facts and determine his responsibility, if any, and whether he violated any Carrier rules, regulations and/or policies in connection with whether or not he inspected passing train P39391-19 at approximately 1915 hours on August 20, 2015 while working as a crew member of M37161-19. Following the investigation, the Carrier found Claimant guilty of the misconduct alleged, in violation of USOR—Rule 0100—Rules, Regulations and Instructions; USOR—Rule 0104—Duties of Train and Crew Members, and USOR—523—Inspecting Passing Trains. The Carrier assessed him a 45-day actual suspension.

The underlying facts of this case are not in dispute. On August 20, 2015, Claimant was the engineer on train M37161-19, and Carrier officials were performing efficiency testing on Claimant and his conductor. At about 9:15 a.m., Claimant had his

train stopped in the siding at Tolono, in anticipation of a three-way train meet. A southbound Amtrak train was also in the siding, and a northbound Amtrak train was to pass Claimant's train on the main line. Once that train cleared, the southbound Amtrak was to back out of the siding and proceed south on the main line, while Claimant's train waited in the siding.

While Claimant and his conductor came down from their train to perform a roll-by inspection of the northbound train, they did not do so for the southbound train. The failure to perform that roll-by is the basis for the charges against Claimant.

Trainmaster Stephen Hyatt testified at the investigation that he was one of the officials involved in the efficiency testing. He stated that after the northbound train passed Claimant's train, the southbound Amtrak gave numerous car counts over the radio as it backed out of the siding. He explained that when that train approached the head end of Claimant's train, he observed that Claimant's crew was still in the cab of their locomotive. He entered the cab and questioned the employees and, he testified, they told him they had not realized the southbound Amtrak was that close. He stated that he also asked them if they had heard the radio traffic, and the conductor replied that he was not sure, that the radio might have been turned down, although they knew the train was coming. Mr. Hyatt also stated that Claimant should have seen, in his mirror, the train's approach in time.

Mr. Hyatt acknowledged that Rule 523 required that at locations where trains will meet, the train to arrive second, in this case the Amtrak southbound, must notify the first train, Claimant's train, when they pass the approach to the siding to allow crew members to be in position for the roll-by. He further acknowledged that he did not hear the Amtrak train give that notice. Regardless of whether the Amtrak train gave that notice, he stated, Claimant and his crew had been informed by the dispatcher that there would be a three-way meet at Tolono and the southbound Amtrak had made numerous transmissions as it backed out of the siding. Therefore, he maintained, Claimant and his crew knew the train was coming and should have positioned themselves to perform the roll-by.

Claimant acknowledged at the investigation that he was aware he was to participate in a three-way meet, and that his train would be on the siding as an Amtrak train went by northbound, and then another Amtrak train behind them on the siding would come around going south. He stated that after the northbound train went by, he waited for the other Amtrak, pursuant to Rule 523, to tell them it would be moving alongside them. He maintained that the southbound Amtrak never contacted his crew at all. He was not on the ground because he was not aware the southbound Amtrak was in a position to move.

Claimant stated that he noticed the control signal system at the south end of Tolono, which governed the southbound Amtrak's movement, was lined up for its approach. However, he testified, he took no action and did not try to ascertain when the train would begin moving, because he was waiting for that train to announce that it would

be coming by them, and it never did give that notice. The dispatcher did not tell him the train was coming. He was not aware of the train's approach until he looked out his mirror and saw that it was approximately 20 cars from their head end. At that point, there was not enough time for his crew to get in position for a roll-by.

The Carrier asserts that the record demonstrates Claimant knew, or should have known, that the southbound train would be approaching and he was therefore required to be in position to perform the roll-by. The Carrier notes that the dispatcher had informed the crew of the three-way meet and the southbound Amtrak made numerous radio transmissions which put Claimant on notice as to the train's position and approach. Moreover, the signal was lined for the southbound Amtrak's approach.

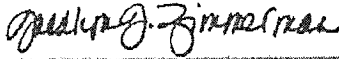
The Organization argues that Claimant and his crew were able to observe the northbound Amtrak approaching from the head end, and were able to get into position to perform that roll-by. However, as the southbound Amtrak backed out of the siding and proceeded to the main line, Claimant and his crew did not hear any communications from that train and did not realize the train was fast approaching until Claimant observed it in his rear side view mirror; by then, it was too late for him to get into position to perform the roll-by.

We have carefully reviewed the record in its entirety. The record is clear that Claimant and his conductor failed to perform the required roll-by of the southbound Amtrak train. Claimant justifies his action on the sole basis that the Amtrak train failed to give the required Rule 523 notice of its approach. Claimant's conductor testified that their radio was turned down, so it is not entirely clear that they would have heard the notice if it had been given. In any event, as the Carrier argues, all employees must take responsibility for working safely and ensuring compliance with the Carrier's Rules. Claimant was aware of the three-way meet and that the southbound Amtrak would come by after the northbound, and the southbound, accordingly to the Carrier's witnesses, made numerous radio transmissions concerning its location.

When Claimant saw that the signal was lined for the southbound Amtrak's approach, it was incumbent upon him to at least take some action to determine when the train would be coming, instead of sitting by and blaming his inaction on the failing of another crew. His guilt has been proven by substantial evidence. Given the nature of this offense and Claimant's disciplinary record, we cannot say that the Carrier's determination that a 45-day suspension was warranted was excessive or arbitrary.

AWARD

Claim denied.



JACALYN J. ZIMMERMAN
Neutral Member



JOHN K. INGOLDSEY
Carrier Member

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MARCUS RUEF
Organization Member

Dated this 4th day of August, 2017.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)
LOCOMOTIVE ENGINEERS)
AND TRAINMEN)
vs.)
ILLINOIS CENTRAL RAILROAD)
COMPANY)

CASE NO. 113
AWARD NO. 113

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Darren Krug for removal of Reprimand from his personal work record that was assessed on August 31, 2015, plus an additional day's pay for attending the hearing for alleged violation of USOR—Rule 0501—Speed in allegedly delaying train L57091-28 on July 28, 2015 around mile post 450.5 on the Cherokee Subdivision.

FINDINGS:

Public Law Board No. 7559, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Darren Krug, has been employed by the Carrier since 2005. On July 31, 2015, the Carrier charged Claimant to attend an investigation to develop the facts and determine his responsibility, if any, and whether he violated any Carrier rules, regulations and/or policies in connection with allegedly delaying train L57091/28 on July 28, 2015 around mile post 450.5 on the Cherokee Subdivision starting at approximately 16:05 hours while working as a crew member of that train. Following the investigation, the Carrier found Claimant guilty of the misconduct alleged, in violation of USOR—Rule 0501—Speed, and issued him a Letter of Reprimand.

On July 28, 2015, Claimant was the engineer on train L57091. At approximately 4:00 p.m., the train came upon a fallen tree branch obstructing the track near milepost 450.5 on the Cherokee Subdivision. Due to communication problems in the area, it was not possible for Claimant to contact the RTC directly, and he had the crew of another train in the area, the L571, call and relay the information. The Carrier's evidence consists

of recordings of the conversations between the dispatcher and the train relaying information back and forth for Claimant.

Claimant's crew questioned whether they could attempt to move the tree branch, and the dispatcher questioned whether doing so would cause damage, and then told them to stand by. There is also a statement from the dispatcher that the employees could contact him by any means possible, including cell phones. Claimant and the other employees waited and did not attempt to contact the dispatcher.

Apparently some of the employees on the two trains—but not Claimant, who stayed on the locomotive—attempted to move the tree, but were unable to do so, and that information was relayed to the dispatcher. There is a photograph in evidence which, the employees involved testified at the hearing, shows the tree after they had been able to remove some of the branches but it became apparent that they would not be able to clear the tree from the track. Although it is not clear who made it, there was apparently a request for mechanical forces to come to the site to clear the tree. The dispatcher stated that the mechanical crew was about two hours away, and the employees confirmed that it took about that long for those employees to arrive and clear the track.

The Carrier asserts that Claimant is guilty of unnecessarily delaying his train, apparently because he did not join in the unsuccessful effort to move the tree limb, and because he did not contact the dispatcher for two hours after the dispatcher was notified that maintenance of way assistance would be required. However, it also appears that the dispatcher told the employees that it would take approximately two hours for that crew to arrive. Once they did, and the track was cleared, Claimant apparently proceeded.

No one interviewed the employees involved following the incident, and they did not give their accounts thereof until the investigation. It is very difficult to ascertain, from the recordings relied upon by the Carrier, what exactly Claimant did wrong. Apparently he did not attempt to help move the tree, but it appears it was not possible to do so without equipment these employees did not possess. While the Carrier relies upon Claimant's failure to contact the RTC, the record also shows that the dispatcher told the employees to "stand by" and that another employee let the dispatcher know that the employees were unsuccessful in their attempt to move the tree. The dispatcher stated that it would take about two hours for the engineering crew to arrive, so it is difficult to see how additional contact with the dispatcher would have changed anything.

As best as can be determined from this record, especially as the employees were not interviewed at the time, is that Claimant's crew, through the other crew, notified the dispatcher of the situation and were told to stand by. Other crew members attempted unsuccessfully to move the tree, and determined that equipment and tools they did not possess would be required. That information was apparently conveyed to the dispatcher, who arranged for an engineering crew, which took about two hours to arrive. That certainly caused a delay, but it is difficult to ascertain how that can be ascribed to

Claimant or how, if he had helped with the removal attempt or contacted the dispatcher, it would have shortened the delay.

The Carrier has failed to meet its burden of proving, by substantial evidence, that Claimant unnecessarily delayed his train. The claim will be sustained. The Carrier is ordered to remove the Letter of Reprimand from his personal record.

AWARD

Claim sustained. The Carrier is ordered to comply with this Award within 45 days.



JACALYN J. ZIMMERMAN
Neutral Member



JOHN K. INGOLDSBY
Carrier Member

Marcus J
Ruef

MARCUS RUEF
Organization Member

Digitally signed by Marcus J Ruef
DN: cn=Marcus J Ruef, o=BLET,
ou=VP, email=mjruef@ble-t.org,
c=US
Date: 2017.08.04 15:27:11 -05'00'

Dated this 4TH day of August, 2017.