

PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Illinois Central Railroad

STATEMENT OF CLAIM:

Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Michael Maura on May 9, 2016, following the formal investigation held on April 25, 2016. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other employment related benefits, that he would have received while in active service.

OPINION OF BOARD:

On April 8, 2016, Engineer Michael Maura (Claimant) received a Notice of Investigation directing him to appear for a formal investigation into the following matter:

...to develop the facts and to determine your responsibility, if any, in connection with an incident that occurred at approximately 1135 hours, April 2, 2016 at or near Rockwell Yard on BRC, wherein you allegedly failed to properly perform handbrake test prior to leaving equipment unattended while working as a crew member on Job assignment U70491-01, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

The formal investigation was held on April 25, 2016, together with two other investigations involving Claimant held on the same day. Following the investigation, in a letter dated May 9,

2016, the Carrier informed Claimant that he had been found guilty as charged and was dismissed from Carrier's service as of that date. The Organization filed a claim on behalf of Mr. Maura on June 13, 2016. That claim was denied by the Carrier on August 11, 2016. The matter was subsequently progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute. It is properly before the Board for resolution.

The Carrier maintains that it has shown by clear and convincing testimonial evidence that Claimant is guilty of the charges leveled against him. It dismisses Claimant's statement that the crew intended to perform the brake test and notes that the Conductor's testimony discredits that statement. In light of Claimant's prior record, the Carrier insists that the discipline assessed was fair.

The Organization points out that the crew had not left the train at the time they were "reminded" by Carrier's officer to perform the standard brake test. Moreover, the Organization protests, the Crew (Claimant and his Conductor) were allowed to continue their tour and were not removed from service until the following day. Thus, the crew were not viewed as an immediate danger to themselves, Carrier equipment or other employees and the discipline of dismissal is clearly excessive.

The Board has reviewed the transcript and documentary evidence offered here and find that there was reasonable cause to discipline Claimant, but the penalty of dismissal was excessive, particularly in view of the fact that the crew were allowed to finish their tour of duty following their alleged offense. We find that Claimant's personal file shall be amended to indicate a discipline of 30 days' actual suspension.

This is a companion case to our Award No. 150. Accordingly, we recognize that Claimant's personal record will reflect this Award's holdings; however, per Award No. 150, he is to be restored to service without back pay upon successful completion of the Carrier's return-to-work requirements, but with all other rights and privileges intact.

AWARD

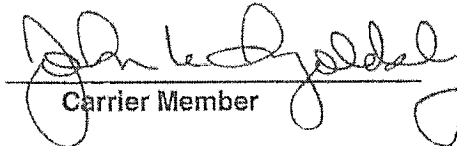
Claim sustained only to the extent set forth in the Foregoing Opinion.



Elizabeth C. Wesman, Chairman



Organization Member



Carrier Member

Dated 23 Mar 2018

PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Illinois Central Railroad

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Derrick Jones for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on May 17, 2016. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of USOR—General Rule A—Safety, USOR—General Rule C—Alert and Attentive, USOR-Rule 0104—Duties of Train and Engine Crew Members, and USOR—Rule 0850—Where Stop Must Be Made.

OPINION OF BOARD:

At the time of the incident giving rise to this claim, Engineer Derrick Jones (Claimant) was an engineer on assignment M30271-24, on the McComb Subdivision. On April 25, 2016, at approximately 1015 hours, his train was observed passing the red signal at Kyzar on Main Track 1, at Mile Post 805.8. As a result of that incident, on that same date, the Carrier sent Claimant and his Conductor a Notice of Investigation directing them to attend a formal investigation into the incident described below:

...to develop the facts and to determine your responsibility, if any, in connection with whether or not you passed the red signal at Kyzar, on main 1, MP805.8 on the McComb Subdivision at approximately 10:15 hours on April 25, 2016 while

working as crew members of M30271-24, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

The formal investigation was held on May 5, 2016. Following the investigation, in a letter dated May 17, 2016, the Carrier notified Claimant that he had been found guilty as charged and was dismissed from service as of that date. The Organization filed a claim appealing the discipline on Mr. Jones's behalf on June 16, 2016. The claim was denied by the Carrier on August 18, 2016. The claim was then progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute. It is properly before the Board for adjudication.

The Carrier maintains that there can be no reasonable question that Claimant passed the red signal by 300 feet. It notes that Claimant admitted his mistake both at the hearing and in his initial written statement following the incident. The Carrier also points out that the delay in removing him from service after the incident at issue was a result of Carrier's later examination of his overall safety record, which reflects a lack of conscientiousness when it comes to safety. At that point it was determined that it was best practice to remove him from service until after the investigation. Under the circumstances, and in view of Claimant's past record, the Carrier insists that discharge was warranted and asks that the claim be denied in its entirety.

The Organization insists that the post-investigation procedure following the formal investigation held on May 5, 2016 was significantly procedurally flawed. It protests that the alleged video used to confirm Claimant's alleged violation was not readily available to the Organization and hampered their ability to file a meaningful claim. With regard to the merits of the case, the Organization protests that the Carrier witness's testimony was given excessive weight by the hearing officer, and also notes that Claimant was entirely honest during his

testimony and in his original statement. It also points out that, with respect to Claimant's discipline record, the infraction occurring on November 24, 2013 is listed three times, which unfairly misrepresents Claimant's actual discipline record. Thus, the Organization urges that the instant claim should be sustained.

The Board has reviewed the transcript and documentary evidence presented on this record with care. We do not find that the lack of availability of the video at issue unfairly impeded the Organization's ability to file a fully informed claim on Claimant's behalf. Moreover, with respect to Claimant's discipline record, while the "triple entry" for the same action on November 24, 2013 does artificially inflate Claimant's record, there remain other moving violations on his record, which are a concern for the Carrier and for the Board, as is the violation at issue here.

However, based on Claimant's immediate reporting of his passing the red signal to the RTC, his honest initial written statement, and his forthright testimony on the transcript, we do not find that Claimant has failed to learn from his disciplines. In the unique circumstances of this case, and without precedent for similar cases, we find that Claimant should be returned to work, without back pay, but with all other rights and privileges intact.

AWARD

Claim sustained only to the extent set forth in the foregoing Opinion.

Elizabeth C. Wesman

Elizabeth C. Wesman, Chairman

Marcelo J. Paez
Organization Member

John W. Giddens
Carrier Member

Dated 23 May 2018

PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Illinois Central Railroad

STATEMENT OF CLAIM:

Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Steven Voss on June 10, 2016 following the formal investigation held on May 31, 2016. Claiming payment for all time lost, including time wrongfully withheld from service pending, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other employment related benefits, that he would have received while in active service, for alleged violation of USOR—Rule 0520—Movement on Non-Main Track and SOR—Rule 0710—Switches Run Through.

OPINION OF BOARD:

At the time of the incident precipitating this grievance, Engineer Steven Voss (Claimant) was working as a crew member (Engineer) on R99491-07 in Sioux City Yard. At approximately 0830 hours on May 7, 2016, his train operated through the west end of the SC06 Switch. That switch was lined against his movement. As a result of the incident, on May 9, 2016 the Carrier sent Claimant and his Conductor a Notice of Investigation directing them to attend a formal investigation into the following matter:

...to determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies in connection with when you allegedly ran

through the West end of the SC06 Switch and whether or not you allegedly failed to follow the proper procedures for getting on and off moving equipment while working as a crew member of R99491-07 in Sioux City Yard at approximately 0830 hours, May 7, 2016.

The formal investigation was held on May 31, 2016. Following the investigation, in a letter dated June 10, 2016, the Carrier notified Claimant that he had been found guilty as charged and was dismissed from Carrier's service as of that date. The Organization filed a claim on Mr. Voss's behalf on June 30, 2016. The Carrier denied the claim on August 22, 2016. The matter was then progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute. It is properly before the Board for resolution.

The Carrier maintains that it has demonstrated with ample evidence on the record that Claimant is guilty of the charges leveled against him. It insists that Claimant was in a position to check the alinement of the switch, while the Conductor was not. Accordingly, the Carrier asserts, the Claimant bears sole responsibility for the switch run-through. Furthermore, the Carrier contends, given Claimant's poor discipline record, the assessment of termination was neither excessive nor arbitrary.

The Organization protests that the only Carrier witness was not a first-hand witness and cannot testify credibly as to what actually happened. Moreover, the "on site" witness was listed as appearing and then did not show up -- to the distinct disadvantage of the Organization. Finally, the Organization points out that Claimant was proceeding with the "long hood forward," and was thus unable to see the switch in front of him. It notes as well that there was no major damage done and absolutely no one was injured.

The Board has reviewed the transcript of the investigation and the documentary evidence attendant thereto. We concur with the Carrier that the Claimant bears responsibility

for the run through, and we do not find the length of the hood as a viable excuse for not seeing the switch. With the longer hood, Claimant should have been proceeding with more caution than he did, knowing that his field of vision was attenuated. However, we do not find that the ultimate penalty of dismissal was appropriate. We note that Claimant's record contains only one safety violation prior to this incident, and the rest of his discipline record has to do with attendance. Moreover, Claimant acknowledge responsibility for the incident (Tp. p. 89), while his Conductor, who failed to notify Claimant that he was departing the train, accepted none (Tp. p. 90). At bottom line, we find that the ultimate penalty of dismissal in this case is excessively harsh and disproportionate to the violation. Accordingly, the Claimant's discipline shall be reduced to a 60-day actual suspension, with back pay awarded for his time out of service less the 60 days. The amount of back pay shall be determined jointly by the Organization and the Carrier in accordance with the practice on this property.

AWARD

Claim sustained only to the extent set forth in the foregoing Opinion.

Elizabeth C. Wesman

Elizabeth C. Wesman, Chairman

Marcus J. Quaf
Organization Member

John W. Dwyer
Carrier Member

Dated 23 MAY 2018

PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Illinois Central Railroad

STATEMENT OF CLAIM:

Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Christopher Bizzard on July 18, 2016, following the formal investigation held on July 07, 2016. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other employment related benefits that he would have received while in active service.

OPINION OF BOARD:

At the time of the incident precipitating this claim, June 29, 2016, Engineer Christopher Bizzard (Claimant) was serving as an engineer on assignment M30171-29 on the McComb Subdivision. At approximately 1045 hours, Claimant's train passed by MP 845.7 in excess of the speed limit. In a letter dated July 1, 2016, the Carrier sent Claimant and his Conductor a Notice of Investigation directing them to appear for a formal investigation into the following matter:

...to develop the facts and determine your responsibility, if any, in connection with you allegedly exceeding the speed limit at MP 845.7-845 on the McComb Sub, on June 29, 2016, at approximately 1045 hours. This occurred while you

were working as crew members on M30171, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

A formal investigation was held on July 7, 2016. Following that investigation, in a letter dated July 18, 2016, the Carrier notified Claimant that he had been found guilty as charged and was dismissed from Carrier's service as of that date. The Organization filed a claim on Mr. Bizzard's behalf on August 2, 2016. In a letter dated September 27, 2016, the Carrier denied the claim. The claim was then progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute. It is properly before the Board for adjudication.

The Carrier contends that both the testimonial and the documentary evidence offered show without question that Claimant's train passed the Mile Post at issue at nearly twice the ten mile-per-hour speed limit, at 19 miles-per-hour. It also points out that Claimant employed improper braking procedure, slowing more than a tenth of a mile beyond where he should have been slowed to the proper speed. The Carrier insists, as well, that given Claimant's prior safety violation for which he waived formal investigation, which occurred barely a year before the present incident, the discipline of dismissal was clearly warranted.

For its part, the Organization disputes the Carrier's implication that Claimant was a hazard to the Carrier or fellow employees and insists that it should not have held him out of service pending an investigation. It also points out that Claimant admitted his mistake and, furthermore, he was not decertified by the FRA as a consequence of the incident at issue, which, it argues, brings into question the actual gravity of his violation. It also contends that Claimant brought his train down to the proper speed within the short distance of one tenth of a mile. Finally, it protests, the Conductor received only a 16-day suspension. Thus, the

employee equally responsible for the safe conduct of the train received a light penalty, while Claimant was dismissed from service, obviously not a remotely equitable assessment of discipline.

The Board has read the transcript of the investigation in this case and reviewed the documentary evidence presented on the record. There cannot be any doubt that Claimant failed to slow as required. We disagree with the Organization that one tenth of a mile, more than 520 feet, is a trivial distance. Moreover, the Board is a separate forum from the FRA, so the FRA's apparent decision not to disqualify Claimant does not impact the deliberations of this Board.

The Carrier has pointed out that Claimant had a prior safety violation for which he received a 45-day suspension barely a year before the incident at issue in this case. However, the Board notes that Claimant accepted responsibility for his actions and waived his right to an investigation. Beyond that safety violation, Claimant has no other safety-related disciplines on his personal record. In his nearly nine-year career, any other discipline has been for attendance issues. In addition, we are aware that the Conductor, who is traditionally equally responsible for the safe conduct of the train, was given only a 16-day suspension. Even if the Conductor had an absolutely spotless record prior to this incident, the discrepancy between his discipline and Claimant's must still be viewed as extreme.

Under the circumstances Claimant should have received considerable discipline for his actions, particularly in light of his prior 45-day actual suspension, but the Board finds that the ultimate penalty was excessive and disproportionately harsh in this case. (See our Award No. 2, PLB 7239.) We find that Claimant's discipline shall be reduced to a 90-day actual suspension

and that he should be returned to work, with full back pay but for that suspension and with all other rights and privileges intact, once he has passed Carrier's return-to-work requirements. The amount of back pay shall be jointly determined by the Parties in accordance with the usual practice on the property.

AWARD

Claim sustained only to the extent set forth in the foregoing Opinion.

Elizabeth C. Wesman

Elizabeth C. Wesman, Chairman

Marcus J. Ruff
Organization Member

Donk J. Golding
Carrier Member

Dated 23 Mar 2018

PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Illinois Central Railroad

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Michael Maura, PIN # 152176, for removal of 3 Days Actual Suspension from Service May 06, 2016 through May 08, 2016. Claiming compensation for all time lost, and all notations of discipline expunged from his personal work record, pertaining to the alleged violation of USOR—Rule 1106—Daily Operating Bulletin (DOB) and USOR—Rule 0100—Rules, Regulations and Instructions in connection with the alleged incident of whether or not Engineer Michael Maura initialed and/or signed his Daily Operating Bulletins at or near Rockwell Yard on BRC at approximately 1145 hours, 02 APRIL 2016.

OPINION OF BOARD:

On April 6, 2016, Engineer Michael Maura (Claimant) received a Notice of Investigation from the Carrier, which instructed him to appear for a formal investigation into the following matter:

...to determine whether or not you initialed and/or signed your Daily Operating Bulletins at or near Rockwell Yard on BRC, at approx. 1145 hrs. 02 APRIL 2016 and if any rule, policies or instructions were violated in connection therewith. At the time of the alleged incident you were working as a crew member on job assignment U70491-01.

The formal investigation was held on April 25, 2016 in conjunction with two other investigations involving Claimant on the same day, but at different times. Following the investigation, in a letter dated May 9, 2016, the Carrier notified Claimant that he had been found guilty as charged and

was assessed the penalty of 3 days' actual suspension, from May 6, 2016 through May 9, 2016 (time served). The Organization filed a claim on Mr. Maura's behalf on May 26, 2016. The Carrier denied that claim on August 11, 2016. The matter was then progressed in accordance with the Parties' Agreement, up to and including conference on the property, after which it remained unresolved. It is properly before the Board for adjudication.

The Carrier points out that Claimant was required to sign the final page of the Daily Operating Bulletin (DOB), and initial all the other individual pages before commencing his tour of duty. It points out that Claimant admitted failing to do so. Accordingly, the Carrier maintains, discipline was clearly warranted.

The Organization protests that Claimant testified without contradiction that he read the DOB but forgot to sign as required. It argues that such a minor error on Claimant's part should result in a coaching opportunity and, given that the results of his other sequential investigations resulted in Carrier dismissing Claimant twice, the Organization suggests that there was something of a "vendetta" at work by the Supervisor against the Claimant.

The Board has reviewed this record carefully. We do not find any indication to support the Organization's allegation of a personal "vendetta" against Claimant. Nevertheless, Claimant testified without contradiction that he read the DOB – an essential requirement prior to starting his tour of duty – but neglected to sign and initial the appropriate pages. Under the circumstances we do agree with the Organization that such a lapse does not call for a penalty of an actual suspension and concludes that it more appropriately merits a written warning. Accordingly, the Board finds that Claimant's actual suspension shall be expunged from his personal record, and the notation shall be corrected to indicate a written warning.

AWARD

Claim sustained only to the extent set forth in the foregoing Opinion.

Elizabeth C. Wesman

Elizabeth C. Wesman, Chairman

Marcus J. Quigley
Organization Member

John H. Goldsby
Carrier Member

Dated 23 MAY 2018

PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Illinois Central Railroad

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Brian Root, PIN #117498 for 5 Days Actual Suspension from Service, June 13, 2016 through June 18, 2016. Claiming compensation for all time lost, and all notations of discipline expunged from his personal work record, pertaining to the alleged violation of USOR—Rule 0603—Coupling/Uncoupling Precautions in connection with a safety audit that was performed on you while working as a crew member of L58691-30 between the 0430 hours and 0500 hours in Dubuque yard on March 30, 2016.

OPINION OF BOARD:

At the time of the incident giving rise to this claim, Engineer Brian Root (Claimant) was assigned as a crew member of L58691-30 in Carrier's Dubuque Yard. As a consequence of the results of a Carrier safety check on March 30, 2016, the Carrier sent Claimant and his Conductor a Notice of Investigation (NOI) on April 1, 2016. The NOI instructed him to appear for a formal investigation into the following matter:

...to develop the facts and to determine your responsibility, if any, in connection with a safety audit that was performed on you while working as a crew member of L58691-30 between the 0430 and 0500 hours in Dubuque yard on March 30, 2016, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

The formal investigation was held on June 2, 2016. Following that investigation, in a letter

dated June 13, 2016, the Carrier informed Claimant that he had been found guilty as charged and was assessed a five-day actual suspension. In a letter dated June 23, 2016, the Organization filed a claim on Mr. Root's behalf. That claim was denied by the Carrier on September 6, 2016. The claim was then progressed in the usual manner, in accordance with the Parties' Agreement, up to and including conference on the property, after which it remained unresolved. It is properly before the Board for adjudication.

The Carrier maintains that testimony on the record, as well as documentary evidence offered, indicate clearly that Claimant did not make the proper "stretch" test of his train while being observed by the Carrier officer who testified. As he pointed out, Claimant's crew did not stretch a joint in accordance with USOR 603, which provides that, "When coupling equipment, [a crew must] verify it is properly secured and can be coupled to safely before moving the equipment. No. 1, stretch the slack to ensure all couplings are made...." The Carrier also points out that the Conductor accepted responsibility as a member of the crew and waived his right to a hearing. He, too, was assessed a five-day actual suspension. Accordingly, the Carrier insists that the penalty was fair, and the claim should be denied.

The Organization protests that the hearing was not fair, and that a key witness was omitted from the testimony heard. It notes that not all Carrier officers performing safety checks on the date in question were present for questioning and cross-examination. The Organization also points out that the Carrier officer who did testify had never served as a Conductor or Engineer, and so had no experience regarding what the proper procedure was, beyond the narrow confines of the USOR Rules. Under the circumstances, the Organization insists that there is insufficient evidence against Claimant to allow the Board to sustain the claim.

The Board has carefully reviewed the testimonial and documentary evidence presented on this record. We do not find that the hearing was procedurally flawed, or that the Carrier witness was *per se* unqualified to testify regarding the incident at issue. In performing a safety check, observing Carrier officers obviously must be cognizant of the safety regulations applicable to the function they are observing, or they would not be assigned to conduct such tests. Under the facts presented here, the Board does not find that the penalty assessed was excessively harsh or arbitrary. Clearly sole responsibility for stretching the cars cannot reasonably be imposed upon the Conductor in this situation. Accordingly, we find no basis upon which to contradict Carrier's assessment of discipline in this matter.

AWARD

Claim denied.

Elizabeth C. Wesman

Elizabeth C. Wesman, Chairman

Marvin J. Ruff
Organization Member

Paul J. Gold
Carrier Member

Dated 23 MAY 2018

AWARD NO. 157
NMB CASE NO. 157

PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Illinois Central Railroad

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Wayne Dhom, PIN #115473, for 15 Days Actual Suspension from Service, June 10, 2016 through June 24, 2016. Claiming compensation for all time lost, and all notations of discipline expunged from his personal work record, pertaining to the alleged violation of USOR—General Rule A—Safety, USOR—General Rule W—Job Briefings, USOR—General 502—Showing Movements, and USOR—Rule 603—Coupling/Uncoupling Precautions.

OPINION OF BOARD:

At the time of the event precipitating this claim, Engineer Wayne Dhom (Claimant) was a member of the crew on assignment R93091-18/REF61-18. On May 18, 2016 at approximately 0928 hours the crew shoved the locomotive and several cars, resulting in a collision with another cut of cars on the track. As a consequence of that event, on May 19, 2016, the crew were sent a Notice of Investigation (NOI). The NOI directed them to appear for a formal investigation into the following matter:

...to develop the facts and to determine your responsibility, if any, in conjunction with a shoving movement at or near MP 200, on the Champaign Sub, on May 18, 2016 at approximately 0928 hours. This occurred while you were working as crew members on R93091-18 and/or REF61-18, and whether you violated any Company rules, regulations and/or policies in connections with the incident.

The formal investigation was held on June 2, 2016. Following the investigation, in a letter dated June 10, 2016, the Carrier informed Claimant that he had been found guilty as charged and was assessed a penalty of a fifteen-day actual suspension. The Organization filed a claim on Mr. Root's behalf on July 19, 2016. The Carrier denied that claim on September 8, 2016. The claim was then progressed in accordance with the Parties' Agreement, up to and including conference on the property, after which it remained in dispute. It is properly before the Board for resolution.

The Carrier contends that not only did Claimant's train result in a collision among cars, but it has shown that Claimant's crew did not conduct a job briefing prior to the move at issue. The Carrier rejects the Organization's claim that the investigation was fatally procedurally flawed, simply because Claimant did not attend. It points out that it had not received the reasonably requested medical documentation of Claimant's inability to attend or testify until after the investigation and, notwithstanding Claimant's absence, his representative was able to mount a thorough and informed defense. The Carrier also maintains that the discipline assessed was not unreasonable in light of the Claimant's violations and the potential for injury to other employees.

The Organization insists that there can be no doubt that the Carrier committed a fatal procedural error when it failed to postpone the investigation at the Organization's request. It insists that Claimant's originally submitted form indicating that he was too injured to go back to work, and the medical documentation submitted by Claimant's physician on June 3, 2016, confirms the fact that he was taking pharmaceuticals that likely would make him unable to focus to testify on his own behalf at an investigation.

The Board has reviewed the testimony and the documentary evidence on this record,

particularly the medical reports, with care. We note that the original documentation submitted by Claimant on May 24, 2016, lists his medications and the physical limitations on his activities, but makes no mention of his mental acuity as a result of the medication. It acknowledges that he can drive a car, climb stairs, and lift up to five pounds. The Organization originally requested that the investigation be postponed on May 31, 2016, allegedly because of Claimant's inability to testify, only two days before the investigation was to be held.

The Board finds the Carrier's subsequent request for additional medical records reasonable. When such documentation was not forthcoming prior to the scheduled investigation, it did not agree to a postponement. It is clear from the transcript that Claimant's representative mounted a fully informed defense on his behalf. Claimant's absence is not, *per se* a fatal procedural failing on the part of the Carrier. With respect to the merits of the case, we find sufficient evidence that Claimant did, indeed, commit the USOR violations of which he was accused. Under the circumstances, we do not find a basis for overturning Carrier's assessment of discipline in this case.

AWARD

Claim denied.

Elizabeth C. Wesman

Elizabeth C. Wesman, Chairman

Marcus J. Reef
Organization Member

John L. Speedy
Carrier Member

Dated 23 May 2018

PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Illinois Central Railroad

STATEMENT OF CLAIM:

Claim of 1 day actual suspension from service (June 30, 2016) Engineer Thomas McKinley received and removal of all notations from his work record concerning the alleged violation of USOR—General Rule 1—Duty Reporting or Absence, plus one additional day's pay for attending the investigation on June 21, 2016.

OPINION OF BOARD:

At the time of the incident precipitating this claim, Engineer Thomas McKinley was on the M399, a DA pool job, and his spread was 1700 to 2100 Monday through Friday, rest days of Saturday and Sunday with five starts per week. On May 28, 2016, the Carrier attempted to call Claimant before he was rested, and Claimant did not answer the call. As a result, the Carrier sent Claimant a Notice of Investigation (NOI) directing him to appear for a formal investigation into the following matter:

...to develop the facts and to determine your responsibility, if any, in connection with you allegedly missing a call and failing to protect assignment R91291-28, while subject to call, at approximately 0047 hours, on Saturday, May 28, 2016, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

The formal investigation was held on June 21, 2016. After the close of the investigation, in a letter dated June 29, 2016, the Carrier notified Claimant that he had been found guilty as

charged and was assessed a penalty of one day's actual suspension. The Organization filed a claim on Mr. McKinley's behalf on August 2, 2016, and the Carrier denied that claim on September 14, 2016. The claim was then progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute. It is properly before the Board for adjudication.

The Carrier contends that it has shown clearly that Claimant violated USOR – General Rule 1 – Duty Reporting or Absence. It acknowledges that somehow the post office reported the Notice of Investigation and the postponement notice as having been delivered but actually returned both to the Carrier unopened. However, the Carrier asserts that Claimant was prepared for the investigation and had adequate representation. With respect to the missed call, the Carrier protests that it was not up to Claimant to decide that if he were not rested at the time of the call he could ignore it. Additionally, it points out that Claimant then requested payment for not having had a fifth start – a request the payroll department rejected.

The Organization insists that the process leading to the investigation is fatally procedurally flawed, due to the failure of Claimant to receive either notice regarding the formal investigation. (Tr. p. 7). It also maintains that Claimant was not subject to call on what was he assigned rest day. Accordingly, he was within his rights under the Agreement to decline to take the crew caller's call.

With respect to the Organization's procedural objection, in this particular case, even though the letter notices to Claimant were not delivered, it is clear that the Carrier made a good faith and timely effort to contact him, and the fault is with some administrative hiccup with the USPS. Claimant's statement early in the transcript of the investigation confirms that he knew of

both the NOI and the postponement, since he was informed of each by the crew caller. (Tr.p.7) Moreover, Claimant's representative did not register an objection to proceeding with the hearing at the outset of the investigation. (Tr. p.8). Further, Claimant's representative did a more than adequate job of mounting a full and informed defense of Claimant throughout the hearing. The Board cannot find evidence that Claimant was in any way disadvantaged by the USPS failure, and the Carrier clearly adhered by the timelines from its end.

Regarding the merits of the case, there is ample evidence on this record that Claimant was responsible for taking the crew caller's call, even though at the time he was not yet fully rested. The record supports the principle that he was subject to call after his window and would be properly compensated. The Carrier witness testified credibly that since Claimant had not had his five starts for the week, he was obligated to protect his assignment into Saturday until 1700 hours, because his day off on Saturday does not start until 1700 hours. If Claimant honestly believed he should not have been subject to call, he could have discussed that with the crew caller, and/or followed the generally accepted rubric in labor relations of "obey now, grieve later." Claimant did neither. Under the circumstances, the Board does not find that the assessment of one day's actual suspension in this case was either excessive or arbitrary.

AWARD

Claim denied.

Elizabeth C. Wesman

Elizabeth C. Wesman, Chairman

Marcus J. Reef
Organization Member

John W. Doolittle
Carrier Member

Dated 23 MAY 2018