Case No. 345

Carrier File No. IC-BLET-2021-00186

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Maurice Ford for the discipline of 45 Days actual suspension from service (September 10, 2021 through October 24, 2021). This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, for alleged violation of USOR – Tabular General Bulletin Order.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On September 10, 2021, Claimant Maurice Ford was the engineer on assignment R97671-10. Claimant went to the engine himself to perform an inspection and initialize PTC, while the rest of the crew went to the yard. Claimant initialized PTC, but he did not scroll though the GBOs displayed on the locomotive's computer display system (CDU) to compare them with his paper TGBOs, and he did not notice a Rule 529A order placed on a crossing on his intended route. He then placed PTC in restricted mode, during which a PTC enforcement for possible rule violations

will not occur. Claimant began a shove of approximately two miles, and when the train approached the crossing in question, a signal maintainer who was working there was alerted by the crossing protection activating. He radioed the crew to ask about their protection, prompting Claimant to stop, but not before the train entered the crossing.

By notice dated September 14, 2021, the crew was directed to attend a formal investigation for the purpose of ascertaining the facts in connection with whether or not they occupied the mainline at MP 810.78 without authority in connection with the incident described above. Prior to the hearing, the other crew members were put back to service and made witnesses at the hearing. The hearing was held September 29, 2021, after which Claimant was found to be in violation of USOR 529A – Activation Failure and USOR 1105 - Tabular General Bulletin Order, and by notice dated October 14, 2021, in consideration of his current discipline record, he was assessed a 45-day actual suspension. His engineer certificate was also revoked for 30 days.

The Organization challenges the discipline assessment on both procedural and substantive grounds. It first argues that the Carrier prejudged Claimant's guilt, as evidenced by the fact that the conductor and brakeman were initially charged, but that they were reinstated prior to the hearing. It asserts that the rules in question refer to the obligations of all crew members rather than just engineers, but that the Carrier predetermined that Claimant was solely responsible for the alleged rule violations, as evidenced by its handling of the other crew members.

With respect to the merits, the Organization states that the crew received their TGBOs upon reporting to work and that the conductor verified with the RTC that it was a good one. It states that Claimant initiated PTC on the locomotive, and that he got no prompts for any new GBOs, such as 529As, after which he went to restricted mode, as he had been trained to do, so the crew could switch out cars and shove to an industry within the same CTC block.

Regarding the 529A, the Organization asserts that the train getting into the crossing was an unfortunate incident, but that it was through no one's fault. It notes that the crossing protection actually worked as intended, and it questions whether the signal employee's actions were prompt

enough or if his radio communication was specific enough to prevent the incident.

The Organization states that the crew did as they were trained per the rules that were in effect at the time, but that PTC is a relatively new process with a lot of little issues to work through, as evidenced by multiple bulletins the Carrier has put out addressing PTC matters, including four within a week of the incident in question. One of the changes it notes involved staying in active state, rather than going to restricted mode, until reaching the location where work will be performed. It argues that this is recognition that the prior method of operating in restricted mode does not allow PTC to prevent a train from entering a crossing which is subject to a 529A order.

The Organization contends that the discipline assessed was excessive on these facts. It also challenges the Carrier's consideration of a Level 1 Letter of Conference on Claimant's record to lengthen the suspension. The Organization emphasizes the mitigating circumstances surrounding the incident in question, and it requests that the claim be sustained.

The Carrier, on the other hand, maintains that the evidence submitted by the Carrier witness is adequate to establish that Claimant was in violation of the cited rules. It states that Claimant alone went onto the locomotive and initialized PTC, but that he admitted he did not scroll through the GBOs to compare the paper TGBO with those on the CDU, as is required by USOR 1105. It also states that there is no question that Claimant violated Rule 529 by failing to stop prior to entering the 529A designated crossing.

The Carrier asserts that the various defenses raised by the Organization are insufficient to relieve Claimant of responsibility. It states that, while there may have been multiple rule changes before and after the incident, the fact is that the rules in effect at the time of the incident clearly required Claimant to compare the TGBO and the CDU at the time of initialization, and that Claimant admitted as much. The Carrier avers that any subsequent rule changes do not diminish Claimant's failure to follow the rules which he knew were in place at the time. The Carrier denies that any other mitigating circumstances excuse Claimant of his obligation to comply with USOR 1105 and USOR 529 as written.

The Carrier also denies that any procedural issues impacted the case. It denies that Claimant was prejudged when the initial charges against the other crew members were dropped, stating that preliminary investigation revealed there was no indication that the conductor or brakeman were in violation of any applicable rule, as they were not on the locomotive when Claimant took it upon himself to initialize without comparing the TGBOs and the GBOs on the CDU, despite knowing the rule which required him to do so.

The Carrier states that there can be no questioning the seriousness of improperly entering a crossing subject to a 529A designation. It states that such action put the conductor, the brakeman, the signal maintainer, and the general public at risk. It lists the potential consequences of entering a crossing with a malfunctioning gate, and it asserts that Claimant was fortunate nothing catastrophic happened. The Carrier adds that Claimant could not have worked for 30 days due to his certificate being suspended under FRA regulations. It asserts that the violation in question is clearly defined as a Level 3 violation under its discipline policy, which calls for a 45-day suspension when Claimant's active discipline record reflected a prior Level 1 infraction. It also denies that it was improper to consider the Level 1 Letter of Caution in making that determination. The Carrier concludes that the assessment was not arbitrary or an abuse of discretion, and it requests that the claim be denied.

We have carefully reviewed the record and the parties' arguments, and we find no procedural barrier to our consideration of the merits. We find no basis to conclude that the conductor or brakeman bore responsibility for Claimant's failure to compare the GBOs on the CDU to the TGBOs, or that Claimant was singled out, and we find no indication that Claimant was prejudged or that the hearing was unfair.

We also find that the record contains sufficient evidence to support the finding of guilt in this matter. The Carrier's burden in matters such as this is not proof beyond a reasonable doubt, but merely the production of substantial evidence to support the discipline assessment, which has been defined in prior awards as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

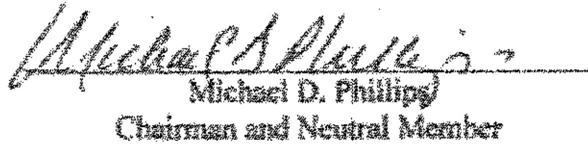
Here, we believe that the evidence was such that a reasonable mind could accept the conclusion urged by the Carrier that Claimant failed to compare the TGBOs with the restrictions listed on the CDU before he deactivated PTC, and that in doing so, he failed to meet the requirements of USOR 1105. Claimant admitted that he did not do so, and he admitted he was aware of the requirement to do so. We also find sufficient evidence to establish that Claimant was in violation of USOR 529 when he improperly entered the crossing which was subject to a 529A order. The signal employee confirmed that the train entered the crossing by approximately two car lengths before he had a chance to provide flagging protection. Moreover, Claimant himself admitted to a violation of USOR 529A, and countless awards have held that such an admission is sufficient to meet the Carrier's burden of proof.

We also find no mitigating circumstances which would relieve Claimant of his responsibility to compare the GBOs on the CDU with the TGBO prior to going to restricted mode. There is no indication that the somewhat fluid nature of the Carrier's instructions regarding various aspects of PTC operations somehow misled Claimant as to what his obligations were. We also find no indication that the 529A order was improperly placed or that the signal maintainer was responsible for Claimant improperly entering the crossing.

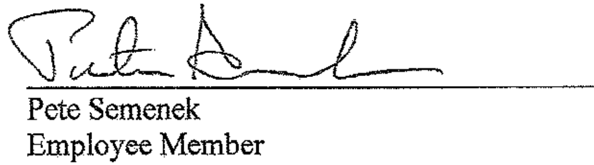
Having found that the rule violation was established, the Board turns to the level of discipline assessed. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion. We concur with the Carrier that compliance with 529A is essential in light of the potential for significant consequences, involving not only traffic over the crossing, but for Carrier employees such as the conductor and brakeman who were riding the point of the move. We concur with the Organization, however, that the specific circumstances presented here, when considered with Claimant's record, did not warrant a suspension in excess of the period of Claimant's certification revocation. While this finding does not impact the level of discipline assessed under the Carrier's discipline policy, we

find that Claimant should be paid for wage loss in excess of a 30-day suspension.

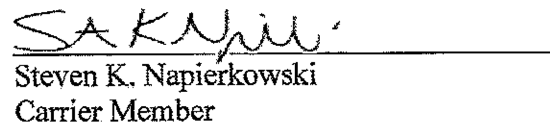
AWARD: Claim sustained in accordance with the findings.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 346

Carrier File No. IC-BLET-2021-00187

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Lee Adams for the discipline of 30 Days actual suspension from service (October 22, 2021 through November 22, 2021). This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, for alleged violation of USOR 701 – Position of Switches and Derails.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On September 30, 2021, Claimant Lee Adams was the engineer on assignment L55371-30, working in Jackson, Mississippi. A manager was conducting testing, and he placed banners on the 5-day switch intended to simulate an improperly lined switch. Claimant was operating long hood forward and did not see the banners, but when his conductor saw the banners and said stop, Claimant did so, but not before running over the banners.

By notice dated October 4, 2021, the crew was directed to attend a formal investigation for the purpose of ascertaining the facts and determining their responsibility, if any, in connection with their alleged failure to stop short of a simulated improperly lined switch banner during the incident described above. Prior to the hearing, the conductor was removed as a charged employee and listed as a witness, apparently because he signed a waiver. The hearing was held October 13, 2021, after which Claimant was found to be in violation of USOR 520 - Movement on Non-Main Track, and USOR 701 – Positions of Switches and Derails, and by notice dated October 21, 2021, he was assessed a 30-day actual suspension.

The Organization first raises a procedural argument regarding the transcript of investigation. It states that the copy it received did not include Exhibits 2, 3 and 5, which addressed the conductor changing from a charged employee to a witness, and it argues that this would have explained why that occurred, as the conductor was equally responsible for seeing the switch banner. The Organization contends that the incomplete transcript is a violation of Article 29, Paragraph F of the current agreement. It appears that the Organization is correct regarding the missing exhibits, and in fact the transcript which we have been provided is likewise missing those exhibits. Nevertheless, we concur with the Carrier that, inasmuch as the documents were addressed during the hearing, such omission is *de minimis* in this instance, and that it does not impede either our review of the matter or the Organization's ability to progress its claim. We therefore will not disturb the discipline assessment on that basis.

With respect to the merits, the Organization maintains that the investigation did not establish that Claimant was in violation of the cited rules. The Organization points to Claimant's testimony that he looked at the switch to make sure there was no gap, the point was flush against the rail, and that the switch was lined for his movement, and it was, but that he never saw the banners. It also cites the conductor's testimony that he could tell the switch was properly lined well in advance, and well before he ever saw the banners. It also notes the conductor's testimony that Claimant would not have been able to see the banners from his position operating long hood forward, but that they had had peer-to-peer discussion about the position of the switch.

The Organization notes the requirements in USOR 520 to operate at a speed that allows stopping within half the range of vision of several specified items, including a switch lined improperly, but it states that none of those items were involved in this instance. Likewise, it points to the portion of USOR 701, which states, "visually check to see that switches and derails are properly positioned for intended movement, the points fit properly, and the target, if equipped, corresponds to their position," and it questions how Claimant could have violated that rule when the switch was properly lined.

The Organization further contends that the administered test is not a valid one as it is not visually similar to what Claimant would encounter in the instance of a misaligned switch. It states that the properly lined switch was visible long before a small piece of fabric could be identified as a simulated misaligned switch, and it posits that use of such a small fabric device is not an accurate simulation. Citing prior awards which have overturned discipline associated with switch banner test failures, the Organization concludes that the discipline assessment was unwarranted and unjustified and that it should be overturned.

The Carrier, on the other hand, maintains that the record contains substantial evidence to support the discipline assessed. It states that the evidence clearly established that Claimant violated USOR 520 and USOR 701 when he failed to stop short of the banners placed on the switch. The Carrier denies that there were mitigating circumstances, or that the test was not valid. The Carrier points to the contents of System Bulletin Notice No. 13 as putting Claimant on notice that the banners would simulate an improperly lined switch and that he was expected to stop short of it. The Carrier avers that Claimant had a responsibility to be alert to his route and any impediments they might encounter, especially when operating under Rule 520.

The Carrier asserts that the point of performing the test is to keep employees engaged in paying attention to switches, switch points, and anything on the rail that may obstruct switch points, and it states that Claimant was fortunate this was only a test and not an actual obstruction. According to the Carrier, this test is paramount in preventing catastrophes involving severe injuries and/or fatalities. The Carrier states that the banners were placed properly in accordance with the Bulletin

and that they would have been clearly visible to Claimant. The Carrier posits that if Claimant and his conductor had been observing the switch points as they claimed, it would have been impossible to miss the flags which were directly on top of the points. It adds that if Claimant's view was obstructed by operating long hood forward, he should not have been going as fast as he was going.

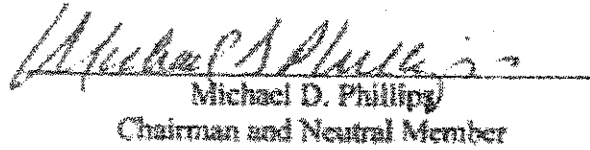
The Carrier states that the Discipline Policy defines improperly lined switches/run through switches as Level 2 violations, and it avers that assessment of a Level 2 and a 30-day suspension is appropriate in light of the nature of the violation, the policy guidelines and Claimant's discipline record, which included a prior Level 2 violation. The Carrier urges that the claim should be denied.

We have carefully reviewed the record and the parties' arguments, and as has been concluded in several prior awards addressing switch banner tests, we first find that the record does not contain substantial evidence to establish a violation of USOR 520. That rule addresses operating at a speed that allows a train to stop within one half the range of vision short of a "derail or switch lined improperly." Here, the switch in question was not lined improperly, so in consideration of the plain language of the rule, no violation occurred. We note that a similar conclusion was reached regarding this type of test in Awards 199 and 200 of PLB 7376. The same conclusion was reached in Awards 328, 343, 365, 402 and 404 of PLB 4559, among others. For similar reasons, we find no violation of USOR 701, which required Claimant to visually check to see that the switch was lined properly, and it was.

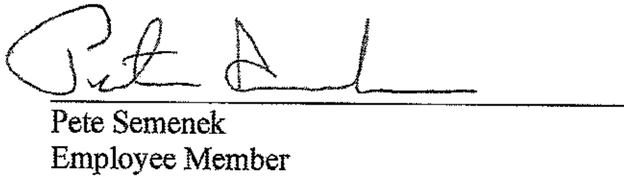
We also note that the specific record in this case includes Claimant's testimony that he could see the switch was lined for his movement, but that he could not see the small flags due to his positioning. The conductor confirmed that he could see the switch position well in advance, and that Claimant would not have had a view of the banner, especially since they were going through a turnout. In contrast to several cases of this type with which we are familiar, the charging manager submitted no photographs or locomotive camera images to demonstrate exactly what Claimant would have seen as he approached the switch, other than a view of the banner after it had been knocked off, so we have no basis on which to dispute Claimant's testimony. On the specific

facts of this case, we find that the record does not establish that Claimant was in violation of the cited rules or that the banners were sufficiently visible that he can be found at fault for not seeing them in time to stop before passing them. We do not believe discipline was warranted on these facts, and therefore we must sustain the claim.

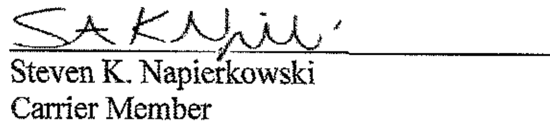
AWARD: Claim sustained.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 347

Carrier File No. IC-BLET-2021-00188

PUBLIC LAW BOARD NO. 7154

PARTIES	) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
	)
TO	)
	)
DISPUTE	) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Omar Boone 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 October 27, 2021. 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 AMC Violation – Attendance Guidelines.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

By notice dated September 28, 2021, Claimant Omar Boone was directed to attend a formal investigation for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with information indicating his absence on September 20, 2021, when considered with other absences during the preceding 12-week period, may be in violation of the Carrier's

Attendance Guidelines. The hearing was held October 14, 2021, at which it was established that Claimant had laid off sick on July 6 and 18, and September 20, 2021. Following the hearing, Claimant was found to be in violation of the Attendance Guidelines, and by notice dated October 27, 2021, he was dismissed from service.

The Organization challenges the assessment on both procedural and substantive grounds. It first argues that the Carrier violated Article 29 of the applicable agreement in that it withheld Claimant from service pending the investigation. The Organization states that the agreement permits such action in limited, specified circumstances, which were not applicable here. The Organization claims that the discipline issued was erroneously imposed due to the Carrier's failure to adhere to the requirements of the governing collective bargaining agreement, and it requests that the claim be sustained on that basis alone.

The Organization also maintains that the discipline assessed was not warranted due to the Carrier's failure to prove that Claimant was excessively absent. It states that the controlling agreement permits Claimant to be absent account of sickness, and it points to his testimony that he was suffering from an illness which required him to mark off work and to seek medical attention. It also observes that he provided a written note from his medical providers regarding his visit on September 20, 2021, which confirmed his need to be absent. The Organization contends that the absence should have been considered excused under the Guidelines, as they do not count approved medical leaves of absence as unexcused absences. It asserts that the Carrier cannot unilaterally impose guidelines which are contrary to the collective bargaining agreement which addresses employees laying off when they are sick.

The Organization points to prior on-property awards which have found discipline to be unwarranted in cases of legitimate illness, and it urges that a similar conclusion should be reached in this instance. It states that the Carrier never denied that Claimant was ill or in need of medical treatment, and that the Carrier was only concerned with the number of absences. On that point, it asserts that Claimant's three absences in a 12-week period equated to 97% availability, which cannot be considered an absenteeism problem. The Organization concludes that in these

circumstances, the discipline issued was excessive, unwarranted and erroneously imposed, and it requests that the claim be sustained.

The Carrier, on the other hand, maintains that the record contains substantial evidence to support the discipline assessed. It states that the evidence clearly established that Claimant had three unexcused absences during the review period and that such absences constitute a violation of its Attendance Guidelines for Unionized Employees because they totaled more than two occurrences of any duration. The Carrier points out that Claimant did not dispute he was absent on those dates. It also challenges the Organization's calculations of Claimant's availability, stating that those figures do not take into account two rest days per week, among other things

The Carrier states that employees are required to report for work as scheduled and if it is necessary to be absent, the employee must utilize one of the authorized leave avenues such as FMLA, personal leave days, or vacation days. It also notes that the guidelines are not "zero tolerance" in that it does contemplate some absences, but it states that Claimant exceeded those allowances. It denies that the agreement permits employees to be absent without ramifications, and the Carrier asserts that there is precedent in this industry that absences may be considered excessive even if they are for legitimate reasons. It cites awards which have found that the Attendance Guidelines are not in conflict with the collective bargaining agreement, and it also points to prior awards which have held that presentation of a doctor's note does not automatically excuse an absence, especially one where the note was generic and did not provide substantial information. It adds that the note here was not provided until October 5, 2021, after the hearing had been scheduled.

The Carrier also denies that any procedural issues impacted the case. It states that the decision to withhold Claimant from service prior to the investigation did not violate the agreement, nor did it impact the fairness of the hearing. The Carrier asserts that such action is not itself discipline or an indication of prejudgment, especially since Claimant was paid during the time he was withheld from service.

With respect to the level of discipline, the Carrier states that Claimant had also committed two

prior Level 2 Violations and another AMC violation within the review period. The Carrier asserts that when the current violation is coupled with his other infractions, dismissal is appropriate in light of the nature of the violation, the policy guidelines and Claimant's discipline record.

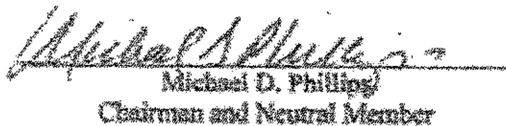
We have carefully reviewed the record in this case and the parties' arguments, and we find no procedural barrier to our consideration of the merits. While the provision cited by the Organization lists some specific charges which justify withholding a charged employee from service, it also contains generic language which covers less specific charges. Perhaps if Claimant had not been under pay during the time he was withheld from service pending the investigation we might find otherwise, but in this instance, we find no indication that Claimant was disadvantaged or prejudiced by the procedures employed.

We also find that the Carrier has met its burden of establishing by substantial evidence that Claimant was in violation of the Attendance Guidelines. While the parties have cited awards which seem to have reached differing conclusions regarding the interplay of the agreement and the policy, we have reviewed them all, and we concur with the numerous prior awards which have held that the agreement provision relied on by the Organization does not shield employees from the consequences of excessive absences. Here, there is no question that Claimant was absent on the dates charged or that Claimant's absences in the review period exceeded the allowances of the guidelines in that he had three occurrences within twelve weeks. The Carrier has a right to expect regular attendance from its employees, and we concur that the number of absences in this period exceeded expectations set forth in the Guidelines. Although Claimant provided some medical documentation regarding the final absence, it was not provided until after the charges were issued, and as noted in the awards cited by the Carrier, such information does not necessarily excuse an absence from being considered in whether a violation of the guidelines has been established. We also do not find the availability percentages urged by the Organization to require a different conclusion, as they do not take into account, among other things, rest days or mandatory time off after service. Although we do not consider the evidence to be overwhelming, we do find that it meets the standard of substantial evidence necessary to meet the Carrier's burden of proof.

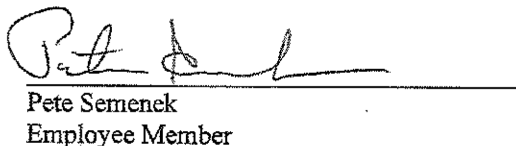
We next turn to the level of discipline assessed. During oral argument, the Organization objected that Claimant's discipline history was not included in the Carrier's submission, such that the Carrier has not established that the discipline is warranted under principles of progressive discipline as set forth in the Carrier's discipline policy. On that point, we note that the Carrier stated in its on-property handling that the discipline was warranted because of specific prior discipline within the review period, and we find no indication that the Organization challenged the Carrier's assertion. Had the Organization raised such a challenge during the on-property handling, the Carrier would have had the opportunity to address it, but we find that the challenge raised at this point is not timely, so we will consider the record to be as stated by the Carrier.

Nevertheless, although that record apparently indicates two Level 2 Violation within the review period, along with another attendance violation, we are not convinced that the facts of this case warrant permanent dismissal. While we found that the cited violation was sufficiently established, we do find the circumstances set forth in Claimant's testimony and in his medical documentation should be considered in mitigation. We also note that the Carrier's description of Claimant's record does not indicate that he has had a history of attendance issues which could be expected to continue. On this specific record, we find that Claimant should be given another opportunity to demonstrate that he can provide safe service with regular attendance. We therefore conclude that Claimant should be returned to service, with seniority unimpaired, but without pay for time out of service.

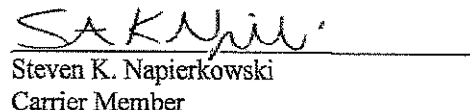
AWARD: Claim sustained in accordance with the findings.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023
Public Law Board No. 7154
Case 347

Case No. 348

Carrier File No. IC-BLET-2021-00209

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

> Claim of CN/IC Engineer Andrew Ooley for the discipline of 30 Days actual suspension from service (November 14, 2021 through December 13, 2021). This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, for alleged violation of USOR 501 – Speed.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On November 13, 2021, Claimant Andew Ooley was the engineer on key train M33791-13, operating on the Freeport Subdivision. At approximately MP 75, Claimant's conductor reminded Claimant that they were approaching a High Threat Urban Area (HTUA) at MP 79-90, where key trains are restricted to 35 mph. Claimant started to notch down, and the conductor brought up the speed restriction again at approximately MP 78. Claimant realized he was going to be speeding and took air, but, as he confirmed in a written statement, he passed MP 79 before he started to slow

down. A Carrier SLE received an email alert generated by one of the locomotives in the consist regarding the overspeed, prompting event recorder and PTC data from the consist to be obtained and reviewed.

By notice dated November 16, 2021, Claimant was directed to attend a formal investigation for the purpose of ascertaining the facts in connection with his allegedly failing to act on the peer-to-peer discussion regarding speed limits and/or speed restrictions along his route and/or allegedly speeding in a HTUA in connection with the incident described above. The hearing was held November 23, 2021, at which Claimant denied exceeding the speed restriction by over 10 mph. The SLE, however, testified that Claimant had entered the restriction at 47.3 mph. Following the hearing, Claimant was found to be in violation of USOR 501 – Speed, and by notice dated November 30, 2021, he was assessed a 30-day suspension concurrent with an FRA decertification/revocation period.

The Organization challenges the discipline assessment, stating that the evidence was insufficient to establish that Claimant exceeded the threshold for a decertification event. It points to Claimant's testimony in which he stated that, while he was speeding, he did not exceed 45 mph when he entered the speed restriction, instead traveling at only 43 mph. The Organization also questions the sufficiency of the download data entered at the hearing. It emphasizes that the event recorder for the lead locomotive was corrupt, and it states that the PTC download from that unit could not be verified for accuracy.

The Organization also references Claimant's testimony that he did have a briefing with his conductor and that he thought he could slow down by notching off, but that the train did not slow as he expected until he had to set the brakes to get down to the prescribed speed. The Organization further notes that Claimant was operating in PTC, and it asserts that the Carrier should have programmed the system to remind employees of HTUA restrictions. It states that the incident would not have happened if PTC were so programmed, and it had alerted Claimant of the upcoming speed restriction.

The Organization further contends that the discipline assessed was excessive. The Organization concludes that the 30-day suspension for Claimant's first infraction was punitive and heavy-handed, and it requests that the claim be sustained.

The Carrier, on the other hand, maintains that the evidence submitted by the Carrier witness is adequate to establish that Claimant was in violation of the cited rule. It points to the SLE's testimony and his presentation of event recorder and GPS data which clearly showed that Claimant was traveling at 47.3 mph when he entered the 35-mph restriction. The Carrier states that Claimant's denial of exceeding 43 mph in the restriction is self-serving and contradictory to his written statement and his other testimony, and that it was not credible.

The Carrier asserts that the defenses raised by the Organization are insufficient to relieve Claimant of responsibility. It states that, regardless of whether PTC was programmed to enforce the speed restriction in the HTUA, Claimant was required to know the restrictions and to comply with them. It avers that the presence of PTC does not relieve crew members of their own obligations to be vigilant and rules compliant. With respect to the absence of event recorder data from the lead locomotive, the Carrier states that the download from the other two locomotives in the consist was consistent, and that the GPS data obtained from the lead locomotive, which is separate from the event recorder, further confirms the speed at which Claimant entered the restriction.

The Carrier states that there can be no questioning the significance of complying with the speed restrictions for key trains in HTUAs, as the potential consequences of an incident with such commodities in a densely populated area can be devastating. It asserts that the violation in question is considered a Level 3 violation under its discipline policy, which warrants a 30-day suspension for a first offense, commensurate with his certification revocation period. It concludes that the assessment was not arbitrary or an abuse of discretion, and it requests that the claim be denied.

We have carefully reviewed the record and the parties' arguments, and we find that the record contains sufficient evidence to support the finding of guilt in this matter. The Carrier's burden in matters such as this is not proof beyond a reasonable doubt, but merely the production of

substantial evidence to support the discipline assessment, which has been defined in prior awards as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

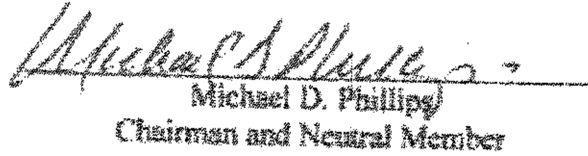
Here, we believe that the evidence was such that a reasonable mind could accept the conclusion urged by the Carrier that Claimant entered the HTUA speed restriction at more than 10 mph above the maximum allowable speed. We find no indication that the event recorder data from the second and third locomotives in the consist was inaccurate, nor do we believe the GPS data from the lead locomotive could not be relied upon to establish Claimant's speed. We also find Claimant's denial of exceeding 45 mph in the restriction to be less than compelling. He admitted he knew he would be speeding, and his own written statement confirms that he only "started to slow down" at the beginning of the restriction.

We also find no mitigating circumstances which would relieve Claimant of his responsibility to comply with the restriction. Claimant apparently was aware of the HTUA restriction, but he simply did not handle his train in a manner which would comply with it. We do not believe that the lack of programming in PTC regarding HTUAs lessens Claimant's obligation to be aware of upcoming restrictions, but it is clear in this case Claimant was indeed warned ahead of time, as Claimant himself conceded that his conductor had given him a reminder well in advance of the restriction.

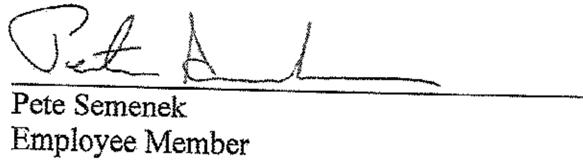
Having found that the rule violation was established, the Board turns to the level of discipline assessed. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion. We concur with the Carrier that compliance with speed restrictions in HTUAs is essential in light of the potential for significant consequences. The 30-day suspension is consistent with the Carrier's discipline policy for such an event, and it is consistent with the certification revocation period. In these circumstances, we are unable to find that the Carrier's actions were an abuse of discretion.

Therefore, we will not substitute our judgment for the Carrier's now.

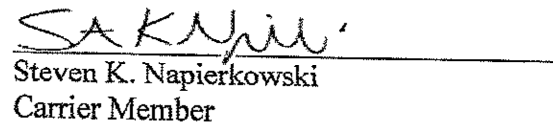
AWARD: Claim denied.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 349

Carrier File No. IC-BLET-2022-00150

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

> Claim of CN/IC Engineer Timothy Kennedy for the discipline of 15 days Actual Suspension from service (January 26, 2022 through February 9, 2022) assessed to Engineer Kennedy. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR L – Communication and Electronic Devices.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On November 14, 2021, Claimant Timothy Kennedy was the engineer on train L54371-13, working at an industry in Taylorsville, Mississippi. A Carrier manager was conducting efficiency tests, and he boarded the locomotive and asked to see Claimant's cell phone. Claimant produced the phone, which was turned off, but in his pocket.

By notice dated November 15, 2021, Claimant was directed to attend a formal investigation for the purpose of ascertaining the facts in connection with the unauthorized possession of an electronic device in connection with the incident described above. The hearing was held January 11, 2022, after which Claimant was found to be in violation of USOR L – Communication and Electronic Devices, and by notice dated January 25, 2022, he was assessed a 15-day suspension.

The Organization does not dispute that Claimant had his cell phone in his pocket while he was on duty, but it states that it was turned off and that Claimant explained why he had in on his person. It points to his testimony that he was working with an inexperienced conductor who did not know how to get in contact with appropriate personnel at that location. It also notes his testimony that they had poor radio coverage in that area, and the phone was necessary for Claimant to communicate with clerks regarding clarification on work to be done at that location. The Organization asserts that, once the necessary information was received, Claimant turned off the phone, but because they were running out of time, he inadvertently put the phone in his pocket rather than in his bag.

The Organization maintains that Claimant was placed in an untenable situation due to the communication challenges. It states that, while Claimant having the phone in his pocket was a technical rule violation, it was understandable why he had it with him, especially in light of his testimony that radios are useless at Taylorsville. The Organization adds that the record establishes that Claimant only used the phone for company business and only on the locomotive after having the required briefing with his crew. The Organization states that Claimant's work record over the prior three years contains only a letter of caution regarding a missed call, and it avers that the discipline assessed is excessive, harsh and arbitrary in these circumstances. The Organization cites prior on-property awards which held that mitigating factors warranted reduction or removal of discipline for Rule L infractions in similar circumstances, and it concludes that the assessment here should be set aside.

The Carrier, on the other hand, asserts that the record contains substantial evidence to support the discipline assessed. It states that the evidence, including Claimant's admissions, clearly

established that Claimant violated Rule L, which requires that electronic devices be not only powered off, but properly stowed. The Carrier denies that Claimant's rationale for having the phone on his person is convincing, noting that there was no indication Claimant was using the phone for the reasons he stated at the time it was discovered on his person.

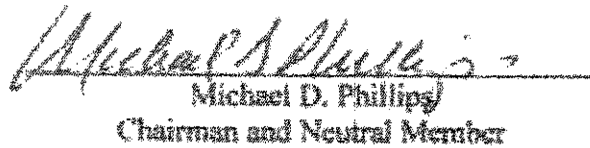
The Carrier avers that the rule in question is designed for the safe operation of the railroad and compliance with FRA regulations. It asserts that the rule is in place as a result of employees being distracted by their electronic devices, which puts them at risk for serious incidents, including injuries and fatalities. The Carrier states that by failing to adhere to the rule requirements, Claimant committed a Level 2 Violation, which is an incident which is serious and/or has the potential to result in an accident or incident. The Carrier avers that the 15-day suspension is appropriate in light of the nature of the violation and the policy guidelines, and it adds that Claimant could have waived the hearing and accepted a record suspension with no monetary loss. The Carrier concludes that the discipline assessment should be upheld.

We have carefully reviewed the record in this case and the parties' arguments, and we find that the Carrier has met its burden of establishing by substantial evidence that Claimant was in violation of the cited rule. The facts of the matter are not really in dispute. Claimant readily admitted that he had his phone on his person rather than stowed as required by the rule, essentially ending our inquiry into the sufficiency of the evidence necessary to support the charge. The fact that Claimant may have needed to use it due to communication issues does not alter that conclusion, as it appears that he had concluded any necessary communications.

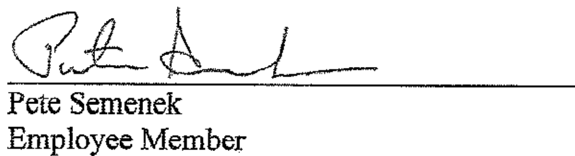
We next turn to the level of discipline assessed. There is no question that electronic devices can be a serious distraction in the work environment and that significant incidents have been associated with them. In this particular instance, however, we believe that circumstances mitigate against imposition of an actual suspension. The issues with radio reception at that location seem to be adequately established, or at least the charging manager did not dispute them. There also seems to be no dispute that Claimant only actually used the phone because of those issues. As the Organization notes, prior awards have addressed the specific circumstances of such violations, and

we believe it is appropriate to do so here as well. Based on the specific facts of this case, we find that the matter would be adequately addressed by a Level 1 letter of reprimand rather than a suspension, and that Claimant should be compensated for time lost during the 15-day suspension assessed. We find no basis, however, to award pay for the day of the hearing.

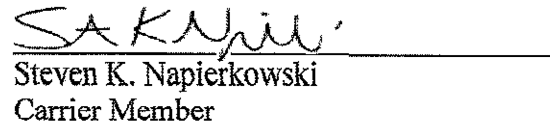
AWARD: Claim sustained in accordance with the findings.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 350

Carrier File No. IC-BLET-2022-00037

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Andrew Shepard for the discipline of 30 Days actual suspension from service (February 10, 2022 through March 11, 2022). This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, for alleged violation of USOR 520 – Movement on Non-Main Track and USOR 701 – Position of Switches and Derails.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On January 7, 2022, Claimant Andrew Shepard was the engineer on assignment A48871-06, working in Jackson, Mississippi. A manager was conducting testing, and he placed banners on the 1A switch intended to simulate an improperly lined switch. Claimant's conductor was on the ground between the 1 and 2 switch, at approximately the clearance point for the foul zone of the 1A switch, with Claimant alone in the locomotive. The conductor told Claimant to come ahead, and Claimant observed the switch targets to be correct for his intended route, after which he began

disinfecting the locomotive, including wiping down the console and engine stand. When he saw the banners, he could not stop in time before running them over.

By notice dated January 11, 2022, Claimant was directed to attend a formal investigation for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with his alleged failure to stop short of a simulated improperly lined switch banner during the incident described above. The hearing was held January 25, 2022, after which Claimant was found to be in violation of USOR 520 - Movement on Non-Main Track and USOR 701 – Positions of Switches and Derails, and by notice dated February 9, 2022, he was assessed a 30-day actual suspension.

The Organization maintains that the investigation did not establish that Claimant was in violation of the cited rules. The Organization points to Claimant's testimony that he saw the switch target and switch points were lined for his route, and it cites testimony of the charging manager who stated that there is no rule that says an engineer cannot determine a switch is lined by looking at the target. It also notes the testimony of Claimant's conductor, who stated that he looked down the lead and saw the switch targets and points, and that they appeared to be lined up, but that he did not see the banners. The Organization argues that the conductor was equally responsible for the movement, but that he was not charged in the incident.

The Organization notes the requirements in USOR 520 to operate at a speed that allows stopping within half the range of vision of several specified items, including a switch lined improperly, but it states that none of those items were involved in this instance. Likewise, it points to the portion of USOR 701, which states, "visually check to see that switches and derails are properly positioned for intended movement, the points fit properly, and the target, if equipped, corresponds to their position," and it questions how Claimant could have violated that rule when the switch was properly lined, as confirmed by the charging manager.

The Organization further contends that the administered test is not a valid one as it is not visually similar to what Claimant would encounter in the instance of a misaligned switch. It states that the properly lined switch was visible long before a small piece of fabric could be identified as a

simulated misaligned switch, and it posits that use of such a small fabric device is not an accurate simulation. It notes Claimant's testimony that the banners resemble a piece of trash, leading to a common nickname of "Cheeto bag." Citing prior awards which have overturned discipline associated with switch banner test failures, the Organization concludes that the discipline assessment was unwarranted and unjustified, and that it should be overturned.

The Carrier, on the other hand, maintains that the record contains substantial evidence to support the discipline assessed. It states that the evidence clearly established that Claimant violated USOR 520 and USOR 701 when he failed to stop short of the banners placed on the switch. The Carrier denies that there were mitigating circumstances, or that the test was not valid. The Carrier points to the contents of System Bulletin Notice No. 8 as putting Claimant on notice that the banners would simulate an improperly lined switch and that he was expected to stop short of it. The Carrier avers that Claimant had a responsibility to be alert to his route and any impediments they might encounter, especially when operating under Rule 520, and that he should not have been going so fast if he was distracted by other duties.

The Carrier asserts that the point of performing the test is to keep employees engaged in paying attention to switches, switch points, and anything on the rail that may obstruct switch points, and it states that Claimant was fortunate this was only a test and not an actual obstruction. According to the Carrier, this test is paramount in preventing catastrophes involving severe injuries and/or fatalities. The Carrier states that the banners were placed properly in accordance with the Bulletin and that they would have been clearly visible to Claimant. It states that Claimant should not have been surprised by their appearance, as examples are clearly shown in the Bulletin.

The Carrier states that, while switch targets can be a good indication if there is an issue with a switch, they are not to be relied upon to confirm position of switches, and that Claimant should have confirmed the switch was lined properly. The Carrier posits that if Claimant had been observing the switch points as was required, rather than attempting to multitask and disinfect the locomotive, it would have been impossible to miss the flags which were directly on top of the

points. It also avers that there was no basis to charge the conductor, as he was not in position to see the switch while Claimant was moving, and it maintains that Claimant alone was in charge of the movement.

The Carrier states that the Discipline Policy defines improperly lined switches/run through switches as Level 2 violations, and it avers that assessment of a Level 2 and a 30-day suspension is appropriate in light of the nature of the violation, the policy guidelines and Claimant's discipline record, which included a prior Level 2 violation and an active AMC violation. The Carrier urges that the claim should be denied.

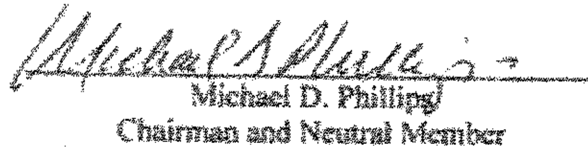
We have carefully reviewed the record and the parties' arguments, and as has been concluded in several prior awards addressing switch banner tests, we first find that the record does not contain substantial evidence to establish a violation of USOR 520. That rule addresses operating at a speed that allows a train to stop within one half the range of vision short of a "derail or switch lined improperly." Here, the switch in question was not lined improperly, so in consideration of the plain language of the rule, no violation occurred. We note that a similar conclusion was reached regarding this type of test in Awards 199 and 200 of PLB 7376. The same conclusion was reached in Awards 328, 343, 365, 402 and 404 of PLB 4559, among others.

For similar reasons, we find no violation of USOR 701, which required Claimant to visually check to see that the switch was lined properly, and it was. We also note that the portion of that rule cited by the charging manager specifically refers to obligations of an employee handling a switch, which would not be applicable to Claimant. The hearing officer sustained an objection to his attempt to refer to other portions of the rule which the charging officer did not rely upon.

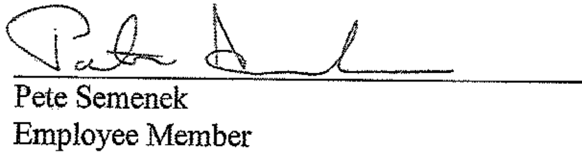
We also note that the specific record in this case includes Claimant's testimony that he could see the switch was lined for his movement, and that he could see the switch targets corresponded, but that he could not see the small flags until he was almost upon them. In contrast to several cases of this type with which we are familiar, the charging manager submitted no photographs or locomotive camera images to demonstrate exactly what Claimant would have seen as he

approached the switch, other than a view of the banner after it had been knocked off, so we have no basis on which to dispute Claimant's testimony. On the specific facts of this case, we find that the record does not establish that Claimant was in violation of the cited rules or that the banners were sufficiently visible that he can be found at fault for not seeing them in time to stop before passing them. We do not believe discipline was warranted on these facts, and therefore we must sustain the claim.

AWARD: Claim sustained.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member

Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 351

Carrier File No. IC-BLET-2022-00046

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer John Roberts for the discipline of 15 Days actual suspension from service (February 16, 2022 through March 2, 2022). This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, for alleged violation of USOR 602 – Handbrakes and ABTH 502 – Securing Unattended Trains and Equipment.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On January 4, 2022, Claimant John Roberts was the engineer on assignment L57391-04. When the crew arrived at Wall Lake, Iowa to pick up a cut of cars from a siding, they were being observed by a team of managers. The crew stopped, and the conductor separated the engine from the rest of the train. They pulled ahead and the conductor operated the switch to allow the light engine to access the siding, leaving a cut of nine cars on the main line without tying any handbrakes or performing a securement test. After the crew tied onto the cars in the siding and conductor released

the handbrakes and began pulling ahead to double back to the cars on the main line, the managers stopped the move to discuss the securement of the cars left on the main line. The crew members stated that they did not believe they were required to secure the cars on the main line, because they were in close proximity to them while picking up the cars from the siding, but the managers told them the conductor could not protect the cars while he was involved in protecting a shove and throwing a switch.

By notice dated January 6, 2022, the crew was directed to attend a formal investigation for the purpose of ascertaining the facts in connection with their alleged failure to properly secure cars left unattended on the main track at or near Wall Lake during the incident described above. The hearing was held February 3, 2022, after which Claimant was found to be in violation of USOR 602 – Hand Brakes and ABTH 502 – Securing Unattended Trains or Equipment, and by notice dated February 15, 2022, he was assessed a 15-day actual suspension.

Claimant's conductor was also found to have violated the same rules, and he likewise was assessed a 15-day actual suspension. That assessment was reviewed in PLB 4559, Award No. 423, with this neutral also being the neutral member of that Board, and the claim there was sustained.

The parties in this case submit essentially the same positions here as were set forth in Award No. 423 of PLB 4559. As in that case, the Organization maintains that the Carrier failed to prove that Claimant was in violation of the cited rules because the cars in question were attended at all times. It states that, while the crew did not apply handbrakes to the cars in question before detaching the locomotive, the Carrier's own rulebook contains a definition of what constitutes unattended equipment, which is equivocal in not specifying a distance a person can be from equipment before it becomes unattended, and that the conductor was consistently close enough to the cut of cars to maintain control of them.

The Organization objects that one of the Carrier managers introduced System Notice No. 25, dated March 29, 2021, into the record to support the assertion that the crew had left the cars unattended. That notice provides in pertinent part:

"When attending equipment, the employee cannot be involved in any other unrelated tasks, i.e., operating switches, protecting shoving movements, etc."

The Organization points out that System Notice No. 25 was not in force at the time of the incident, having been canceled by System Notice No. 1, dated December 30, 2021. The Organization denies that the instructions set forth in System Notice No. 25 remained in force after it was canceled, and it objects to the Carrier applying the provisions of that Notice to find Claimant in violation of the rules which actually were in effect, rules which gave no distance, and which contained no prohibition against being involved in other tasks. It concludes that, in light of the crew's testimony that the cars were never unattended, and in consideration of the inapplicability of the definition relied on by the Carrier, the discipline assessed is unjustifiable and it should be overturned.

The Carrier, on the other hand, maintains that the record contains substantial probative evidence to support the finding that the crew failed to properly secure the cars left on the main line and left them unattended, and that Claimant therefore violated the cited rules. It states that Claimant and the Organization's focus on the definition of "unattended" takes the evidence out of context, and it emphasizes that equipment is unattended if there is no qualified employee close enough to take safe and effective action to control movement. The Carrier notes the managers' testimony that the conductor had thrown a switch and was riding on the locomotive as it shoved back to the cars on the siding, and it asserts that, according to Rule 502, he could not be involved in any other task. The Carrier argues that if the conductor is in the process of performing other tasks that take his attention away from the cars on the main line, it would not be possible for him to properly attend them. It posits that he would not be able to safely and effectively desert his other duties, including dismounting a moving locomotive, to control any unexpected movement of the cars. The Carrier states that the lack of a specified distance in the rule is not determinative, and it asserts that the cars were indeed unattended due to the conductor not being in a position to take safe and effective action if the cars had started to roll.

With respect to System Notice No. 25, the Carrier notes that Claimant was not found to have violated that Notice. It states that the Notice was entered to provide context around communication

and expectations which have been established, and it contends that the Notice was a teaching tool that did not have to be continuously issued to be applicable or understood. The Carrier concludes that the assessment here is consistent with its discipline policy and the seriousness of the infraction, and it requests that the discipline be upheld.

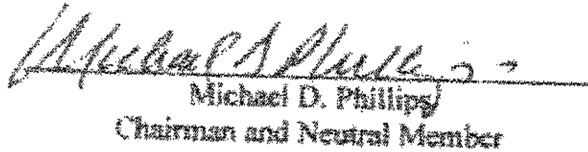
We have carefully reviewed the record and the parties' arguments, and we find no reason to reach a different conclusion on this record than was reached in the case involving Claimant's conductor. In that case, this neutral stated as follows:

> "[T]he Carrier has not met its burden of establishing Claimant's violation by substantial evidence, the standard applicable in these matters. We first note that the specific instructions set forth in System Notice No. 25 had been canceled. We do not find that those instructions are equivalent to a notice which informs crews of a height adjustment to a bridge. Such information about physical measurements is not in our view equivalent to the Carrier's dissemination of requirements or prohibitions against various operating practices. As the Organization observes, operating practice requirements and prohibitions, such as those pertaining to mounting or dismounting moving equipment, are modified with some regularity. We are also aware of other requirements and prohibitions which have undergone modification over time, such as proper positioning when riding equipment, and we cannot agree with the concept that once some advice is contained in a notice, it remains unaffected by a specific cancellation of the document which put the information in place. Certainly, the Carrier is entitled to issue instructions like those in System Notice No. 25, but for reasons not readily apparent, it canceled those instructions and did not reissue them.
>
> We are then left with the specific requirements of USOR 602 and ABTH 502, and the definition which is in effect of 'unattended equipment.' Here, we believe the evidence of record is not sufficient to support the Carrier's conclusion that [the conductor] was not 'close enough to the equipment to take safe and effective action

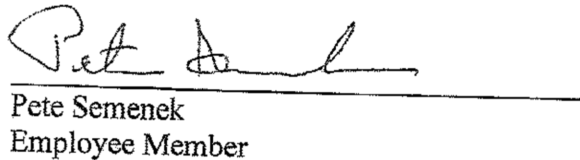
to control its movement,' such that the equipment was truly unattended. The record does not establish the distance [the conductor] was from the cars, but both he and [Claimant] testified that they were always adjacent to the cars on the main line. Perhaps if Notice No. 25 had still been in effect, or its provisions had been incorporated into the rules which actually were in effect, we would agree that [the conductor's] operation of a switch or riding the locomotive on the adjacent track was not in compliance. In the absence of that requirement, however, we believe the Carrier was obligated to establish that [the conductor] was not close enough to take the requisite action, and we find that the evidence presented here was insufficient to do so. On these facts, we must sustain the claim."

We believe the same conclusion is again warranted here, so we must sustain this claim as well.

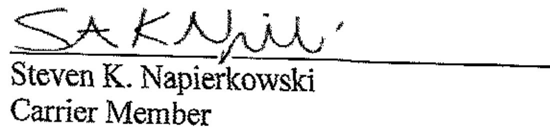
AWARD: Claim sustained.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 352

Carrier File No. IC-BLET-2022-00076

PUBLIC LAW BOARD NO. 7154

PARTIES	) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
	)
TO	)
	)
DISPUTE	) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Jesse Gantt Jr. on March 25, 2022, following the formal investigation held on March 11, 2022. 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 for the alleged violation of ABTH 108 – Class III Trainline Continuity Inspection.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On March 3, 2022, Claimant Jesse Gantt Jr. was the engineer on assignment Z19491-02, preparing to leave the Champaign, Illinois yard. Before departing the yard, the crew set out multiple bad order cars. The conductor then went to the yardmaster office to advise that the train was ready for a carman to test the EOT. While the conductor was making his way to the head end, Claimant worked with the carman to arm and test the EOT. When the conductor boarded the locomotive, he asked Claimant if he was ready to go, and if so, to tone up the dispatcher for a signal to leave.

Prior to their departure, the yardmaster authorized another train to come into the yard. Claimant and his conductor overheard that communication, and the conductor radioed the other train and the yardmaster that they were pulled up to the signal on the outbound track. The inbound train stopped, and the yardmaster picked up the conductor and brought him to the rear of the train so Claimant could shove back to clear the switch for the inbound train. After that move was completed, the crew departed the Champaign yard.

The crew experienced some speed issues during their first twenty miles out of the yard, which resulted in the conductor walking the train. He discovered that there were brakes sticking and/or some cars with pistons out. He asked Claimant to set and release the brakes, after which it appeared that all of the pistons went in and the issue was resolved. An SLE subsequently reviewed an event recorder download of the locomotive, and he determined that a Class III brake test had not been performed prior to the train leaving the Champaign yard.

By notice dated March 7, 2022, Claimant was directed to attend a formal investigation for the purpose of ascertaining the facts in connection with his allegedly failing to perform a required air test in connection with the incident described above. The hearing was held March 11, 2022, at which the SLE testified regarding his review of the download data. Following the hearing, Claimant was found to be in violation of ABTH 108 – Class III Trainline Continuity Inspection, and by notice dated March 25, 2022, in consideration of his current discipline record, he was dismissed from service.

The Organization challenges the discipline assessment on both procedural and substantive

grounds. It first argues that the Carrier prejudged Claimant's guilt, as evidenced by the fact that the conductor was not also charged. It asserts that the conductor is supposed to ensure that Claimant performed his duties correctly, but that he did not. The Organization also argues that the prejudgment is confirmed by the Carrier removing Claimant from service before the SLE reviewed the downloads.

With respect to the merits, the Organization points to Claimant's testimony that he could neither confirm nor deny that he did a proper continuity brake test. It notes his testimony that there were multiple distractions that morning, including his concern regarding consequences of the potential collision with the inbound train. The Organization further asserts that Claimant knew he had air and brakes on the rear car account he had a fall and rise of air pressure on the rear car after the EOT was hung and armed, which is the purpose of a continuity brake test.

The Organization contends that the discipline assessed was excessive for what it terms a minor infraction. The Organization emphasizes the mitigating circumstances surrounding the day in question, and it requests that the claim be sustained.

The Carrier, on the other hand, maintains that the evidence submitted by the Carrier witness is adequate to establish that Claimant was in violation of the cited rule. It points to the SLE's testimony and his presentation of event recorder data which clearly showed that Claimant departed the Champaign yard without performing a Class III brake test. It also cites Claimant's testimony in which he stated he could not confirm whether he had performed the required test.

The Carrier asserts that the defenses raised by the Organization are insufficient to relieve Claimant of responsibility. It states that the Organization's focus on the EOT test is misplaced, noting that the SLE explained the EOT test singles out the rear car and does not test the continuity of the air through the rest of the train. It adds that if Claimant had properly performed a Class III trainline continuity test as required by ABTH 108, it is likely the train would not have been sluggish for those first twenty miles. It notes that the issues seemed to be resolved when Claimant eventually did perform a set and release, which is action he would have performed during the Class III

trainline continuity test. The Carrier denies that any other mitigating circumstances excuse Claimant of his obligation to perform the test.

The Carrier also denies that any procedural issues impacted the case. It denies that Claimant was prejudged, stating that there was no indication that the conductor was in violation of any applicable rule, as he was not required to perform the test and was away from the train while Claimant was getting ready to depart, or that there was any basis to charge him for Claimant's apparent failure to perform the required test. It also states that the decision to withhold Claimant from service prior to the investigation, which was associated with a suspension of Claimant's FRA certification, did not violate the agreement, nor did it impact the fairness of the hearing. The Carrier asserts that such action is not itself discipline or an indication of prejudgment.

The Carrier states that there can be no questioning the significance of ensuring that brake tests are completed properly. It states that the potential consequences of an incident with volatile and dangerous commodities on any given train can be devastating. The Carrier adds that both its own rules and FRA regulations put everyone on notice that brake tests must be properly completed. It asserts that the violation in question is clearly defined as a Level 3 violation under its discipline policy, due to the ramifications that can occur as a result of brakes not being properly tested.

The Carrier states that Claimant's active discipline record includes a prior Level 3 violation and a Level 2 violation. It avers that it is entitled to take Claimant's discipline history into account when assessing progressive discipline for this Level 3 event, and that its policy provides that dismissal is appropriate for such an accumulation of discipline events. The Carrier concludes that the assessment was not arbitrary or an abuse of discretion, and it requests that the claim be denied.

We have carefully reviewed the record and the parties' arguments, and we find no procedural barrier to our consideration of the merits. We find no basis to conclude that the conductor bore responsibility or that Claimant was singled out, and we find no indication that Claimant was prejudged or that the hearing was unfair.

We also find that the record contains sufficient evidence to support the finding of guilt in this matter. The Carrier's burden in matters such as this is not proof beyond a reasonable doubt, but merely the production of substantial evidence to support the discipline assessment, which has been defined in prior awards as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Here, we believe that the evidence was such that a reasonable mind could accept the conclusion urged by the Carrier that Claimant failed to conduct a continuity brake test before departing the Champaign yard as is required by ABTH 108. We find no indication that the event recorder data submitted by the SLE was inaccurate, and the SLE clearly explained how the data confirmed that a test was not performed. Claimant himself could not confirm if he had performed the required test. We concur with the Carrier's observation that the test of the EOT did not meet the requirements of a continuity brake test, for the reasons described by the SLE.

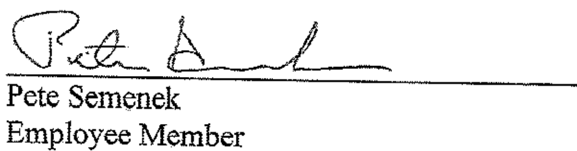
We also find no mitigating circumstances which would relieve Claimant of his responsibility to complete the test. The fact that the crew had to make multiple moves prior to departure apparently contributed to the requirement that the test be performed, so in our view the amount of work prior to departure only confirms the necessity of the test. And while the circumstances involving the inbound train are certainly significant, we note that Claimant was already prepared and waiting to depart when that event occurred.

Having found that the rule violation was established, the Board turns to the level of discipline assessed. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion. We concur with the Carrier that compliance with brake testing requirements is essential in light of the potential for significant consequences. Perhaps if Claimant's record did not already contain an active Level 3 and Level 2 violation, we might find that the instant violation did not rise to the level of a dismissal offense, but we believe the Carrier had the right to consider Claimant's record in accordance with its progressive discipline policy. The assessment here is consistent with the Carrier's discipline policy for this event when Claimant's accumulation of discipline is considered. In these

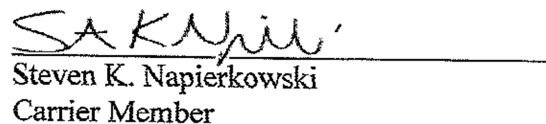
circumstances, we are unable to find that the Carrier's actions were an abuse of discretion. Therefore, we will not substitute our judgment for the Carrier's now.

AWARD: Claim denied.

Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 353

Carrier File No. IC-BLET-2022-00086

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Timothy Kennedy for the discipline of 30 Days actual suspension from service (March 1, 2022 through March 30, 2022). This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, for alleged violation of ABTH 316 – Train Speed Control, USOR 501 – Speed and USOR 104 – Duties of Train and Engine Crew.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On February 28, 2022, Claimant Timothy Kennedy was the engineer on train L57971-28, operating on the Bogalusa Subdivision, which had a maximum speed of 25 mph between MP 73.14 and MP 84.94. While the crew was traversing that segment, the dispatcher called them to inquire about their speed at or near MP 78. A Carrier SLE obtained and reviewed event recorder downloads from the lead locomotive, and he determined that Claimant was exceeding the

maximum speed, reaching 35 mph at times.

By notice dated March 2, 2022, Claimant was directed to attend a formal investigation for the purpose of ascertaining the facts in connection with his allegedly exceeding the speed limit at MP 81.15 on the Bogalusa Subdivision in connection with the incident described above. The hearing was held March 24, 2022, after which Claimant was found to be in violation of ABTH – Train Speed Control, USOR 501 – Speed, and USOR 104 – Duties of Train and Engine Crew Members, and by notice dated April 8, 2022, he was assessed a 30-day suspension.

The Organization challenges the discipline assessment, stating that while there is no doubt Claimant exceeded the prescribed speed on the Bogalusa Subdivision, there is a lot of doubt as to whether he was going more than 10 mph over the authorized speed. It emphasizes that the charge letter refers to a single milepost (MP 81.15), and it objects to the Carrier's references to speeds at other locations. The Organization states that the Carrier's documentation indicates that Claimant was only running at 32 mph at the specific location described in the notice of investigation. It asserts that the Carrier witness entered conflicting evidence regarding the speeds, and that he did not adequately establish that Claimant ever reached 35 mph. The Organization concludes that, in consideration of the circumstances discussed above, the 30-day suspension for Claimant's first such infraction was excessive and arbitrary, and it requests that the claim be sustained.

The Carrier, on the other hand, maintains that the evidence submitted is adequate to establish that Claimant was in violation of the cited rule. It points to the SLE's testimony and his presentation of event recorder data which clearly showed that Claimant exceeded the speed limit for more than 20 minutes and for over 12 miles, and that Claimant was speeding at MP 81.5 and every other point between MP 73.4 and 83.6. It states that data shows Claimant traveling at 32 mph, or 7 miles over the speed limit, at MP 81.1, and that Claimant therefore was not only in violation of USOR 501 by exceeding the maximum speed, but that he was also in violation of ABTH 316 when he failed to bring the train to an immediate stop when he exceeded the speed limit by more than 5 mph.

The Carrier asserts that the defenses raised by the Organization are insufficient to relieve Claimant of responsibility. It states that the reference in the NOI to a single milepost rather than a range between mileposts was an inadvertent administrative error which did not prejudice Claimant. It adds that, even if the Organization's objection could be considered valid, the evidence established that Claimant was exceeding the maximum authorized speed by more than 5 mph at that location, thereby violating all of the cited rules.

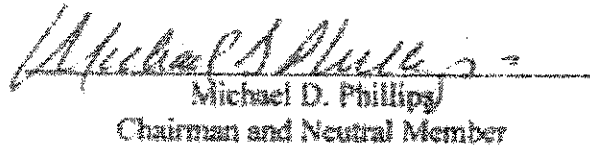
With respect to the level of discipline assessed, the Carrier states that Claimant was originally charged with a Level 3 violation under its discipline policy, which warrants a 30-day suspension for a first offense, but that after review of the record and consideration of mitigating circumstances regarding the locomotive speedometer, Claimant was found guilty of a Level 1 violation, which is the lowest level of discipline under the company policy. It asserts that the 30-day suspension was nevertheless appropriate due to Claimant's past record, which included a previous Level 1 and a Level 2 violation. It adds that Claimant would not have been able to work during the suspension period due to his FRA certification revocation. It concludes that the assessment was not arbitrary or an abuse of discretion, and it requests that the claim be denied.

We have carefully reviewed the record and the parties' arguments, and we find that the record contains sufficient evidence to support the finding of guilt in this matter. The Carrier's burden in matters such as this is not proof beyond a reasonable doubt, but merely the production of substantial evidence to support the discipline assessment, which has been defined in prior awards as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

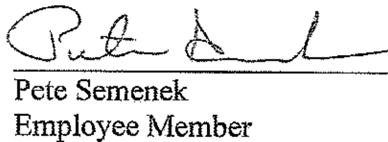
Here, while we concur with the Organization that speeds at locations not set forth in the charge letter are not relevant, we believe that the evidence was such that a reasonable mind could accept the conclusion urged by the Carrier that Claimant exceeded the maximum authorized speed at the location specified in the NOI by more than 5 mph, and that he was in violation of all of the cited rules when he did so. The locomotive download data confirms Claimant's speed, and we do not believe his bare denials are sufficient to overcome that data.

Having found that the rule violation was established, the Board turns to the level of discipline assessed. The Carrier states that the 30-day suspension was appropriate for this Level 1 infraction, when Claimant's recent discipline history is considered. We note, however, that we have addressed the Level 2 assessment in Case No. 349, and we reduced that assessment to a Level 1. We are familiar with the progressive nature of the Carrier's discipline policy, and it appears to us that the reduction of the prior Level 2 would in this instance result in assessment of a 15-day suspension rather than a 30-day suspension. We therefore conclude that Claimant's suspension should be reduced to 15 days.

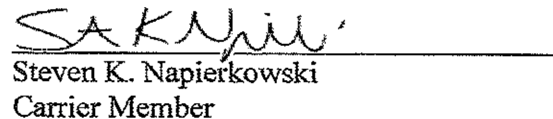
AWARD: Claim sustained in accordance with the findings.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 354

Carrier File No. IC-BLET-2022-00094

PUBLIC LAW BOARD NO. 7154

PARTIES	) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
	)
TO	)
	)
DISPUTE	) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Cedric Simmons for the discipline of 15 Days actual suspension from service (April 28, 2022 through May 12, 2022). This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, for alleged violation of USOR L – Communication and Electronic Devices.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On March 29, 2022, Claimant Cedric Simmons was the engineer on assignment Q19771-29, preparing to depart the Memphis yard. Carrier managers performed a switch banner test on the crew, which Claimant passed. The managers then boarded the locomotive, and among other checks, one of them asked to see Claimant's cell phone. After multiple requests, Claimant stated that it was off and stowed properly. When directly asked for his device, Claimant said it was in his cooler, but when he opened the cooler, the phone was not there. The manager noticed Claimant reaching toward his desk during their interaction, and he then saw the phone on Claimant's

desktop, covered by paperwork. Claimant initially refused to lift the paperwork, until he was given a direct order to do so. He also initially refused to provide a written statement, and finally he wrote just his name, ID number, the date and time.

By notice dated March 30, 2022, Claimant was directed to attend a formal investigation for the purpose of ascertaining the facts in connection with the unauthorized possession of an electronic device in connection with the incident described above. The hearing was held April 21, 2022, after which Claimant was found to be in violation of USOR L – Communication and Electronic Devices, and by notice dated April 28, 2022, he was assessed a 15-day suspension.

The Organization states that Claimant inadvertently placed his phone on his desktop covered by paperwork, but it was powered off, as confirmed by the manager. It states that cellphones and the Electronic Operating Manual (EOM) are very similar in appearance and size, as confirmed by a photo of the two. It says that employees are required to carry their EOM at all times, and that they are almost identical to a phone and easy to confuse. The Organization cites Claimant's testimony that he forgot where his cellphone was, and that he has lost both his cellphone and his EOM before on the engine. It also states that Claimant was in compliance with Federal regulations regarding cellphones, which do not require them to be stowed.

The Organization states that Claimant's work record prior to this incident is spotless, and it urges that assessment of a 15-day suspension, which would be the same for a person who was actually talking on a cell phone, is excessive in these circumstances. The Organization cites prior on-property awards which held that mitigating factors warranted reduction or removal of discipline for Rule L infractions, and it concludes that the assessment here should be set aside.

The Carrier, on the other hand, asserts that the record contains substantial evidence to support the discipline assessed. It states that the evidence, including Claimant's admissions, clearly established that Claimant violated Rule L, which requires that electronic devices be not only powered off, but properly stowed. The Carrier denies that Claimant's rationale for having not having the phone stowed is unconvincing, and it argues that whether a phone and an EOM are

similar sized does not relieve Claimant of his responsibility to stow his phone. The Carrier asserts that whether Claimant complied with FRA regulations is not the issue, and that it has the right to establish rules which are more restrictive than the regulations. It adds that this is not the forum for interpreting Federal regulations.

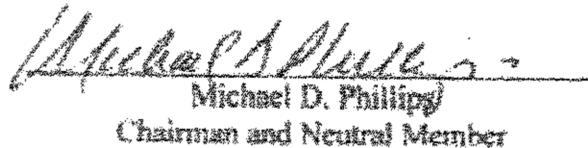
The Carrier avers that the rule in question is designed for the safe operation of the railroad, and it asserts that the rule is in place as a result of employees being distracted by their electronic devices, which puts them at risk for serious incidents, including injuries and fatalities. It further contends that Claimant's actions and elusiveness when questioned about the incident call into question whether the matter was an inadvertent oversight, and that it is likely Claimant knew where the phone was from the beginning.

The Carrier states that by failing to adhere to the rule requirements, Claimant committed a Level 2 Violation, which is an incident which is serious and/or has the potential to result in an accident or incident. The Carrier avers that the 15-day suspension is appropriate in light of the nature of the violation and the policy guidelines, and it adds that Claimant could have waived the hearing and accepted a record suspension with no monetary loss. The Carrier concludes that the discipline assessment should be upheld.

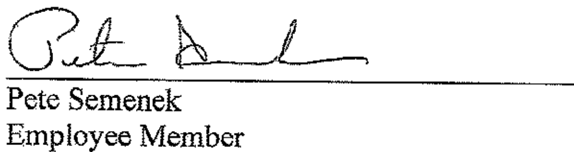
We have carefully reviewed the record in this case and the parties' arguments, and we find that the Carrier has met its burden of establishing by substantial evidence that Claimant was in violation of the cited rule. The facts of the matter are not really in dispute. Claimant ultimately admitted that the phone was on the desktop in front of him rather than stowed as required by the rule, essentially ending our inquiry into the sufficiency of the evidence necessary to support the charge. Claimant's rationale for not stowing the phone, i.e., that he confused it with his EOM, is not particularly convincing, especially in light of his apparently uncooperative behavior when asked to produce the phone. We believe the Carrier is entitled to establish rules regarding cellphones which are more restrictive than the Federal regulations, and we find no indication that Claimant was not subject to the requirement of Rule L to keep the phone stowed.

We next turn to the level of discipline assessed. Although the Organization notes prior awards which have reduced or removed discipline after finding mitigating circumstances in connection with such violations, we find no such circumstances present here. Claimant's prior good record is commendable, and perhaps if we were to be required to set the discipline level *de novo*, we might opt for a lesser sanction, but that is not our function. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion. There is no question that electronic devices can be a serious distraction in the work environment and that significant incidents have been associated with them, and on this record, we cannot find that the Carrier's actions were an abuse of discretion. Therefore, we will not substitute our judgment for the Carrier's now.

AWARD: Claim denied.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member

Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 355

Carrier File No. IC-BLET-2022-00099

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Curtis Harvey for the discipline of 15 Days actual suspension from service (May 5, 2022 through May 19, 2022). This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, for alleged violation of USOR L – Communication and Electronic Devices.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On March 29, 2022, Claimant Curtis Harvey was the engineer on train R93171-29, working in the Memphis yard. A Carrier manager was conducting efficiency tests, and he boarded the locomotive, and among other checks, he asked to see Claimant's cell phone. Claimant produced the phone, which was powered off, from his bib overall pocket.

By notice dated March 30, 2022, Claimant was directed to attend a formal investigation for the purpose of ascertaining the facts in connection with the unauthorized possession of an electronic

device in connection with the incident described above. The hearing was held April 21, 2022, after which Claimant was found to be in violation of USOR L – Communication and Electronic Devices, and by notice dated May 4, 2022, he was assessed a 15-day suspension.

The Organization first raises a procedural objection. It states that the charging manager instructed both crew members on what to add to their original written statements, and that he thus coerced and intimidated the crew members so as to obtain admissions of guilt. We have reviewed the record on that point, however, and we find no procedural barrier to our consideration of the merits. Whether the manager requested the crew members to address how they would avoid potential violations of Rule L in the future does not in our view impact the evidence pertaining to the alleged violations in question, nor do we believe such a request impacts the fairness of the hearing.

With respect to the merits, the Organization does not dispute that Claimant had his cell phone in his bib overall pocket, but it states that it was turned off, as confirmed by the manager. It also states that a careful review of Rule L reveals that Claimant could have his cellphone in his possession. The Organization points to Claimant's testimony in which he explained why he had it on his person, including his safety concern that he might need to call someone if he got injured before boarding the locomotive.

The Organization states that Claimant's work record prior to this incident is spotless, and it urges that assessment of a 15-day suspension, which would be the same for a person who was actually talking on a cell phone, is excessive in these circumstances. The Organization cites prior on-property awards which held that mitigating factors warranted reduction or removal of discipline for Rule L infractions, and it concludes that the assessment here should be set aside.

The Carrier, on the other hand, asserts that the record contains substantial evidence to support the discipline assessed. It states that the evidence, including Claimant's admissions, clearly established that Claimant violated Rule L, which requires that electronic devices be not only powered off, but properly stowed. The Carrier denies that Claimant's rationale for having the phone on his person is convincing, stating that Claimant was performing duties at the time of and

before being asked for the phone, and that he did not fall within any exception in the rule which would relieve him of the requirement to have his phone properly stowed.

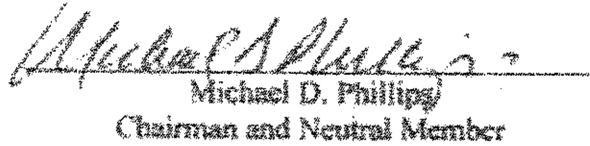
The Carrier avers that the rule in question is designed for the safe operation of the railroad and compliance with FRA regulations. It asserts that the rule is in place as a result of employees being distracted by their electronic devices, which puts them at risk for serious incidents, including injuries and fatalities. The Carrier states that by failing to adhere to the rule requirements, Claimant committed a Level 2 Violation, which is an incident which is serious and/or has the potential to result in an accident or incident. The Carrier avers that the 15-day suspension is appropriate in light of the nature of the violation and the policy guidelines, and it adds that Claimant could have waived the hearing and accepted a record suspension with no monetary loss. The Carrier concludes that the discipline assessment should be upheld.

We have carefully reviewed the record in this case and the parties' arguments, and we find that the Carrier has met its burden of establishing by substantial evidence that Claimant was in violation of the cited rule. The facts of the matter are not really in dispute. Claimant readily admitted that he had his phone on his person rather than stowed as required by the rule, essentially ending our inquiry into the sufficiency of the evidence necessary to support the charge. Claimant's rationale for keeping the phone on his person, i.e., in case he experienced an emergency, would to a great extent reduce or eliminate the rule requirement for stowing devices. We find no indication that Claimant was experiencing an emergency or that he was otherwise not subject to the requirement of Rule L to keep the phone stowed.

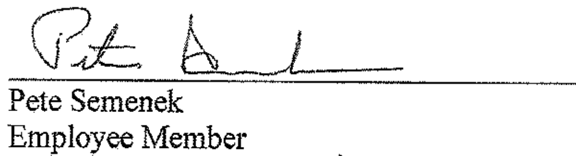
We next turn to the level of discipline assessed. Although the Organization notes prior awards which have reduced or removed discipline after finding mitigating circumstances in connection with such violations, we find no such circumstances present here. Claimant's prior good record is commendable, and perhaps if we were to be required to set the discipline level *de novo*, we might opt for a lesser sanction, but that is not our function. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion. There is no question that electronic devices can be a serious distraction in the

work environment and that significant incidents have been associated with them, and on this record, we cannot find that the Carrier's actions were an abuse of discretion. Therefore, we will not substitute our judgment for the Carrier's now.

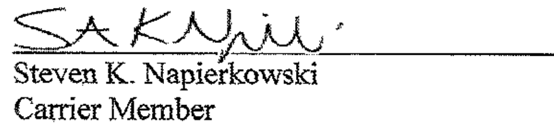
AWARD: Claim denied.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 356

Carrier File No. IC-BLET-2022-00100

PUBLIC LAW BOARD NO. 7154

PARTIES	) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
	)
TO	)
	)
DISPUTE	) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Jon Brown for the discipline of 60 Days actual suspension from service (May 6, 2022 through July 4, 2022). This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, for alleged violation of USOR 520 – Movement on Non-Main Track.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On March 30, 2022, Claimant Jon Brown was the engineer on assignment U75441-25, operating in the Memphis Yard. A manager was performing efficiency tests, and he positioned himself in advance of Claimant's train and held a red flag over the rail for the purpose of performing a stop test. Claimant's train did not stop before it passed the red flag by approximately two engine lengths. Claimant provided a statement in which he said that he did not see the manager with the flag, but that when he did see him, he went to full service brake application to stop. Claimant's

conductor provided a written statement in which he said that he had been talking to Claimant and distracting him from doing his job and that he did not see the manager standing in the midst of the bridge support.

By notice dated April 4, 2022, the crew was directed to attend a formal investigation for the purpose of ascertaining the facts and determining responsibility in connection with their allegedly failing a stop test in connection with the incident described above. The hearing was held April 20, 2022, after which Claimant was found to be in violation of USOR 520 – Movement on Non-Main Track, and by notice dated May 5, 2022, he was assessed a 60-day actual suspension.

The Organization has raised several objections to the assessment of discipline, including questioning whether a red flag as used by the manager falls within the list of items in USOR 520 for which a crew must stop. We are satisfied, however, that a red flag is the equivalent of a stop signal, especially since both crew members acted upon it accordingly when they eventually did see the flag. It is also undisputed that the crew passed the red flag.

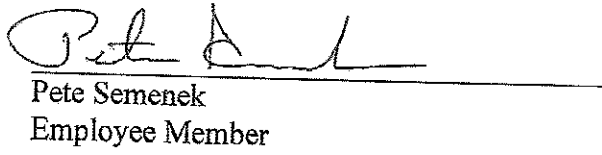
Nevertheless, we have viewed the video footage of the incident and we concur with the Organization's assessment regarding the visibility of the manager. From the engineer's vantage point, the video shows that the manager was positioned in shadows under a highway bridge, which he confirmed was to stay out of the rain which had previously occurred, and that he blended in with the concrete posts until the train was almost to the bridge.

While the Carrier asserts that the manager was visible a sufficient distance away that Claimant should have been able to stop within half the distance of sight, our own viewing of the video does not confirm that assessment. Perhaps if one knew where the manager was positioned and was expecting him to emerge where he did, he could have been noticed earlier, but for an engineer who had no reason to expect a person to emerge from the bridge, where there were no switches or other items which would focus his attention there, we do not believe the test conditions were an

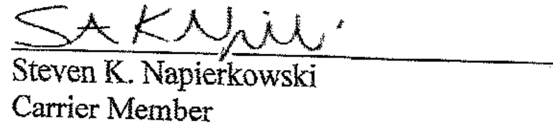
appropriate basis on which to impose discipline.

AWARD: Claim sustained.

Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 357

Carrier File No. IC-BLET-2022-00189

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Maurice Ford on October 21, 2022, following the formal investigation held on October 6, 2022. 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 503 – Handbrake Test and USOR 602 - Handbrakes.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On September 27, 2022, Claimant Maurice Ford was the engineer on assignment L57471-27, working in Hammond, Louisiana. Two managers were in the area conducting efficiency tests, listening on the radio, and they overheard Claimant and his conductor cut away from 11 cars left on a track identified as the Hammond City Lead, without performing a securement test. The

managers went to where the cars were left, and they confirmed that the crew did not apply any handbrakes to the cars left on the track. The crew had run around their train and then to a customer facility to pull a car, before coming back to their train with the car.

By notice dated September 28, 2022, the crew was directed to attend a formal investigation for the purpose of ascertaining the facts in connection with whether or not they properly secured a cut of cars left on the Hammond City Spur Lead at or near MP 859 on the McComb Sub in connection with the incident described above. Prior to the hearing, the conductor signed a waiver, accepting responsibility for his role in the matter. The hearing was held October 6, 2022, after which Claimant was found to be in violation of USOR 503 – Handbrake Test and USOR 602 - Handbrakes, and by notice dated October 21, 2022, in consideration of his current discipline record, he was dismissed from service.

The Organization challenges the discipline assessment on both procedural and substantive grounds. It first argues that the Carrier wrongfully withheld Claimant from service prior to the investigation in violation of Article 29 of the current agreement. It states that Claimant's alleged misconduct did not fall within any of the listed reasons for which employees may be withheld from service. The Organization also asserts that the Carrier violated its own procedures in removing Claimant from service. It states that the Carrier's discipline policy requires local management to consult with Labor Relations before such action is taken, but that such communication apparently did not occur here.

The Organization further contends that the notice of investigation was inaccurate in its description of the track in question as a spur track. It states that the track is not identified as a spur track in the timetable, but that it is simply a lead. It argues that a portion of USOR 602 referenced by one of the managers refers only to main track, sidings and spurs, so that the cited rule does not apply to the situation.

With respect to the merits, the Organization points out that the conductor took full responsibility for the incident and that he signed a waiver. It states that he is the boss of the job, and that it would

have been his responsibility to tie handbrakes, not Claimant's. It notes the conductor's testimony that he did not think he had to tie the cars down because he was running around them to get to the other end to finish his work. The Organization further asserts that there is much confusion over the rule, as it has changed multiple times over Claimant's 23 years of service, and it notes that the conductor informed the managers that this was how they had always handled similar circumstances.

The Organization contends that the entire incident was a misunderstanding by the crew. It reiterates that Claimant only did what his conductor instructed him to do, and it cites a prior award where discipline assessed against an engineer in similar circumstances was overturned. It also asserts that Claimant should not receive disproportionate discipline to that assessed against the employee primarily responsible for the incident, again citing award authority. The Organization concludes that the discipline assessed here is harsh, excessive and unwarranted, and it requests that the claim be sustained.

The Carrier, on the other hand, maintains that the evidence submitted by the Carrier witnesses is adequate to establish that Claimant was in violation of the cited rules. It states that there is no question that the crew left cars on the Hammond City Lead without tying any handbrakes and without testing securement, noting that both of the crew members admitted the relevant facts.

The Carrier asserts that the defenses raised by the Organization are insufficient to relieve Claimant of responsibility. It states that the Organization's focus on whether the track was a spur track or not misses the mark. It notes that the NOI refers to the track as a lead, and it asserts that regardless of the nomenclature, Rule 602 clearly states that "air brakes must never be depended upon to secure unattended equipment," with no qualification as to what type of track is involved. The Carrier asserts that Claimant and his conductor assumed they didn't have to secure the cars, but that they were wrong in that assumption in light of the clear rule requirement to do so.

The Carrier denies that the conductor is solely responsible for the securement of cars. It notes that the rules in question involve duties applicable to engineers as well, and it points to portions of the

rules which require all crew members to confirm proper securement before leaving cars in such circumstances. The Carrier states that whether there have been rule changes over the past 20 years does not relieve Claimant of the responsibility to comply with the current rules, which it states are clear in their requirements.

The Carrier also denies that any procedural issues impacted the case. It states that the decision to withhold Claimant from service prior to the investigation did not violate the agreement, nor did it impact the fairness of the hearing. It also says that Claimant was paid during the time he was withheld from service prior to the original hearing date, so that he was not disadvantaged. The Carrier asserts that such action is not itself discipline or an indication of prejudgment. The Carrier also avers that the incident was handled similar to other cases involving potential dismissal with respect to communications between the field and Labor Relations, but that in any event, such matters do not impact the fairness of a hearing nor do they implicate any agreement requirements.

With respect to the level of discipline assessed, the Carrier states that that the violation in question is clearly defined as a Level 2 violation under its discipline policy. It asserts that Claimant's active discipline record includes a prior Level 1 violation and two Level 2 violations. It avers that it is entitled to take Claimant's discipline history into account when assessing progressive discipline for this Level 2 event, and that its policy provides that dismissal is appropriate for such an accumulation of discipline events. The Carrier concludes that the assessment was not arbitrary or an abuse of discretion, and it requests that the claim be denied.

We have carefully reviewed the record and the parties' arguments, and we find no procedural barrier to our consideration of the merits. While the provision cited by the Organization lists some specific charges which justify withholding a charged employee from service, it also contains generic language which covers less specific charges. Perhaps if Claimant had not been under pay during the time he was withheld from service pending the investigation we might find otherwise, but in this instance, we find no indication that Claimant was disadvantaged or prejudiced by the procedures employed. We also find no indication that communications with Labor Relations prior to removing Claimant from service, or the alleged lack thereof, implicate the fairness of the

proceedings.

We also find that the record contains sufficient evidence to support the finding of guilt in this matter. The Carrier's burden in matters such as this is not proof beyond a reasonable doubt, but merely the production of substantial evidence to support the discipline assessment, which has been defined in prior awards as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Here, we believe that the evidence was such that a reasonable mind could accept the conclusion urged by the Carrier that Claimant failed to comply with USOR 602 and USOR 503 when he failed to secure the cars or test their securement. The facts of the incident are not really in question, and we find no exception in the cited rules which would relieve the crew of their responsibility to secure the cars when they left to retrieve a car from a customer facility.

Regardless of whether the location in question was a spur track or not, we believe that Rule 602 is clear in stating that air brakes must never be depended upon to secure unattended equipment. We also note that the portion of the rule referenced by the Organization references a chart to determine the number of handbrakes on certain types of track, but we do not believe that such reference means that securement is not required on other tracks. We believe that proper securement was also required by the rule on the track in question here.

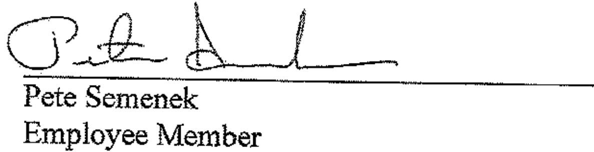
While it is apparent that the conductor had responsibility for the incident, we concur with the Carrier that Claimant shared responsibility. The rules in question apply to all crew members, not just conductors. We are familiar with the award cited by the Organization regarding discipline assessed against an engineer who was following his conductor's instructions, but the circumstances of that case are not so similar to this case that we believe the same conclusion is required here.

Having found that the rule violation was established, the Board turns to the level of discipline assessed. On this point, we concur with the Organization that permanent dismissal is not

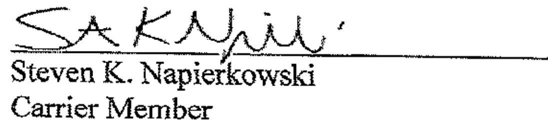
warranted. While we do not believe that Claimant is absolved of his own responsibilities, we do believe his compliance with his conductor's instructions is a relevant consideration. It is also apparent that, while it was misguided, the crew believed they were in compliance with the cited rules due to their specific activities and usual practices. It is noteworthy that Claimant has 23 years of service, and we conclude that, based on the totality of the circumstances, Claimant should be given another opportunity to demonstrate that he can provide safe and efficient service to the Carrier. Claimant is to be returned to service, with seniority unimpaired, but without pay for time out of service.

AWARD: Claim sustained in accordance with the findings.

Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 358

Carrier File No. IC-BLET-2022-00117

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Linda Mosley for the discipline of 30 Days actual suspension from service (May 10, 2022 through June 8, 2022). This claim is for all compensation lost during suspension and removal of all notations from her personal work record of discipline assessed, for alleged violation of USOR 518 – Movement at Restricted Speed.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On April 12, 2022, Claimant Linda Mosley was the engineer on assignment Z19571-12, operating on the Yazoo Subdivision. Three managers were conducting efficiency testing, which involved a red signal being held, requiring Claimant's train to be talked by the signal and to travel at restricted speed. They then positioned themselves around a curve near MP 175.8 in advance of Claimant's train, and one of the managers held a red flag over the rail. Claimant's conductor noticed the flag and alerted Claimant, and although she initially grabbed air and eleven seconds later put the train

in emergency while traveling at 12.5 mph, it did not stop before passing the red flag.

By notice dated April 13, 2022, the crew was directed to attend a formal investigation for the purpose of ascertaining the facts and determining responsibility and whether or not they failed to operate at restricted speed during the incident described above. The hearing was held April 25, 2022, after which Claimant was found to be in violation of USOR 518 – Movement at Restricted Speed, and by notice dated May 10, 2022, she was assessed a 30-day actual suspension.

The Organization first objects to the hearing officer interrupting the conductor's representative when he was questioning one of the Carrier witnesses. Based on our review of the transcript, however, we find no indication that the hearing officer's single clarification question at that point improperly impacted the hearing.

With respect to the merits, the Organization states that Claimant was operating the train at a speed she felt was proper as she rounded the curve. It adds that she was relying on the conductor's point of view in this situation, which it posits is better in some respects than the engineer's position. The Organization states that Claimant took swift action to stop the train after the conductor alerted her to the flag, which was confirmed by the conductor's testimony. The Organization also asserts that the red flag as used by the manager does not fall within the list of items in USOR 518 for which a crew must stop, and it challenges the manager's failure to swing the flag back and forth to better catch the crew's attention.

With respect to the discipline assessed, the Organization contends that a Level 3 punishment for simply failing an efficiency test is excessive. It states that a Level 3 is more along the lines of a decertification or other major incident, and it asserts that the Carrier has applied Level 2 discipline for prior violations of USOR 518, including one assessed Claimant's conductor a year earlier. The Organization adds that Claimant's closing statement confirms her remorse and that she has shared her experience with other employees to increase awareness of the importance of restricted speed. It concludes that the discipline assessed should be reversed.

The Carrier, on the other hand, maintains that the record contains substantial evidence to support the discipline assessed. It states that the evidence clearly established that Claimant's train was required to travel at restricted speed, which is not to exceed 20 mph and which would allow it to stop within half the range of vision, but that it failed to do so when it passed the manager and his red flag. It points to the manager's testimony that, due to the location in curves where there are shorter sight lines, the train should have been traveling slower. The Carrier also points out that both crew members admitted they were not able to stop before the train passed the red flag.

The Carrier states that Claimant took responsibility and indicated she thought she was going slower than she actually was at the time of the incident. It denies that the manager's location was a factor, noting his testimony that he could see the head end of the train when it was 8-12 cars away, in contrast to the crew's testimony that they did not see him until they were only two cars away. It adds that even if the crew's testimony was accurate, the engineer should have been able to stop within one car length, which did not occur. The Carrier notes that download evidence indicates the train was traveling at 13.74 mph when Claimant made her first brake reduction and that it traveled another 189 feet in 11 seconds before she made an emergency application, which it states is inconsistent with her testimony that she saw the flag within two car lengths and immediately began braking.

The Carrier asserts that the crew should have been especially alert for anything on the tracks ahead of them, and that by failing to communicate with each other about their speed and the track ahead of them in sufficient time to take action, the crew was in violation USOR 518 by failing to travel at restricted speed. The Carrier contends that it was fortunate a roadway worker was not on the tracks, as the results could have been catastrophic. The Carrier denies that any aspects of the test were improper. It states that both crew members were well aware what a red flag meant, especially since they eventually stopped after seeing it. The Carrier also asserts that there is no indication that the test was conducted at a location where the flag would be impossible to see or that it was unfair in nature.

With respect to the level of discipline assessed, the Carrier asserts that the assessment was not

arbitrary or capricious. It states that Claimant committed a Level 3 Violation on this occasion, which is a violation of a critical rule, and it avers that the associated suspension was warranted due to the potential consequences of failing to stay focused enough to see a visible stop signal. The Carrier states that there are no mitigating circumstances which warrant modification of the discipline, and it asserts that the assessment is appropriate in light of the nature of the violation and the policy guidelines.

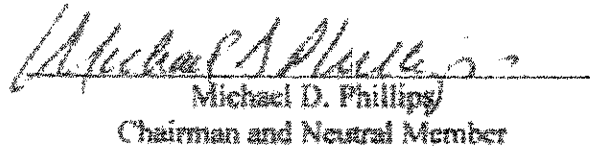
We have carefully reviewed the record and the parties' arguments, and we find that the record contains sufficient evidence to support the finding of guilt in this matter. The Carrier's burden in matters such as this is not proof beyond a reasonable doubt, but merely the production of substantial evidence to support the discipline assessment, which has been defined in prior awards as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Here, we believe that the evidence was such that a reasonable mind could accept the conclusion urged by the Carrier that Claimant was in violation of USOR 518 when she failed to stop for the red flag. We are satisfied that a red flag is the equivalent of a stop signal, especially since both crew members acted upon it accordingly when they eventually did see the flag. It is also undisputed that the crew passed the red flag. We do not believe that the evidence establishes that the actions or inactions of Claimant's conductor negatively impacted Claimant, inasmuch as the flag was on Claimant's side, yet the conductor was the first to notice it. Moreover, Claimant accepted responsibility in her closing statement, and it has been held in many prior awards that a charged employee's admission of responsibility is sufficient to constitute the substantial evidence necessary to meet the Carrier's burden of proof.

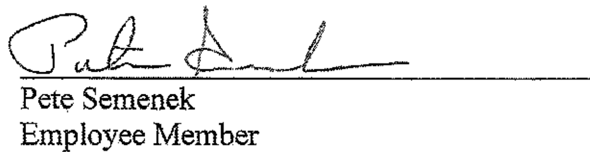
Having found that the rule violation was established, the Board turns to the level of discipline assessed. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion. We concur with the Carrier that compliance with stop signals is essential in light of the potential for significant consequences. The 30-day suspension is also consistent with the Carrier's discipline policy for such an event, and we do not believe the reference to one instance in which a lower level allegedly

was assessed another employee in dissimilar circumstances is sufficient to require a lesser sanction here. In these circumstances, we are unable to find that the Carrier's actions were an abuse of discretion. Therefore, we will not substitute our judgment for the Carrier's now.

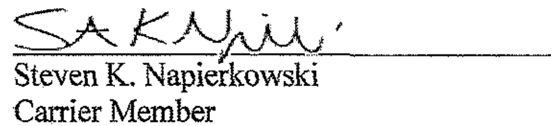
AWARD: Claim denied.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 359

Carrier File No. IC-BLET-2022-00145

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Joseph Gentry for the discipline of 30 Days actual suspension from service (May 19, 2022 through June 17, 2022). This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, for alleged violation of USOR 501 – Speed.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On May 19, 2022, Claimant Joseph Gentry was the engineer on key train L54771-18, operating between Yazoo City, Mississippi and Memphis, Tennessee on the Yazoo Subdivision. At approximately MP 24.2, Claimant's train entered a High Threat Urban Area (HTUA), where key trains are restricted to 35 mph. Claimant did not remember the restriction, however, at the time he entered it. He entered the HTUA at 45 mph, and he operated more than 10 mph above the speed limit in the HTUA for approximately nine miles, reaching a maximum 50 mph, before he

remembered he was in an HTUA and took action to reduce speed. A Carrier SLE was notified of the incident, and he went to the train and obtained statements from the crew. He also obtained and reviewed event recorder downloads from the lead locomotive.

By notice dated May 20, 2022, Claimant was directed to attend a formal investigation for the purpose of ascertaining the facts in connection with his allegedly exceeding the speed limit at approximately MP 24.2 in connection with the incident described above. The hearing was held May 27, 2022, after which Claimant was found to be in violation of USOR 501 – Speed, and by notice dated June 10, 2022, he was assessed a 30-day suspension, concurrent with an FRA decertification/revocation period.

The Organization challenges the discipline assessment, stating that while Claimant never denied he exceeded the speed limit, there are several intervening circumstances which contributed to the incident. It points out that the conductor had only made three trips to Memphis, and that he did not recall any of them being on a key train. It asserts that the conductor therefore was not qualified enough to inform Claimant of the upcoming HTUA restriction. The Organization contends that this put Claimant in the position of carrying the entire weight of the crew, and it posits that the Carrier not only failed to adequately train the conductor, but that the Carrier failed Claimant by essentially putting him on his own. The Organization cites testimony from both crewmembers that Claimant was not provided paperwork that identified the train as a key train, but that he only received a breakdown of the train for entry into PTC.

The Organization further notes that Claimant was operating in PTC, and it asserts that the Carrier should have programmed the system to remind employees of HTUA restrictions. It states engineers are accustomed to looking at the PTC screen for upcoming restrictions, and it argues that the incident would not have happened if PTC were so programmed, and it had alerted Claimant of the upcoming speed restriction. The Organization questions why, despite repeated requests, the Carrier has not added HTUA restrictions in PTC, noting testimony from the SLE that he has advocated for such an update in the programming. It argues that the Carrier should at least post signage to remind employees of upcoming HTUA restrictions, similar to other types of warning

signs such as whistle boards and close clearance signs.

The Organization concludes that, in consideration of the mitigating circumstances discussed above, the 30-day suspension for Claimant's first such infraction was punitive and heavy-handed, and it requests that the claim be sustained.

The Carrier, on the other hand, maintains that the evidence submitted is adequate to establish that Claimant was in violation of the cited rule. It points to the SLE's testimony and his presentation of event recorder data which clearly showed that Claimant was traveling at 45 mph when he entered the 35-mph restriction, and that Claimant traveled at 50 mph, or 15 mph over the maximum speed, for a considerable distance. The Carrier notes that both Claimant and the conductor admitted to the relevant facts and to their responsibility for the rule violation.

The Carrier asserts that the defenses raised by the Organization are insufficient to relieve Claimant of responsibility. It states that, regardless of the conductor's experience level, both crew members were required to know of the speed restrictions which were applicable to them, including the restriction on a key train in an HTUA. It notes that both employees confirmed that they had discussed their train being a key train, and it states that information regarding the restriction was readily available in the applicable timetable.

With respect to PTC programming, the Carrier states that regardless of whether PTC was programmed to enforce the speed restriction in the HTUA, Claimant was required to know the restrictions and to comply with them. It avers that the presence of PTC does not relieve crew members of their own obligations to be vigilant and rules compliant, especially since both crew members here were aware that they were operating a key train.

The Carrier states that there can be no questioning the significance of complying with the speed restrictions for key trains in HTUAs, as the potential consequences of an incident with such commodities in a densely populated area can be devastating. It asserts that the violation in question is considered a Level 3 violation under its discipline policy, which warrants a 30-day suspension

for a first offense, commensurate with Claimant's certification revocation period. It concludes that the assessment was not arbitrary or an abuse of discretion, and it requests that the claim be denied.

We have carefully reviewed the record and the parties' arguments, and we find that the record contains sufficient evidence to support the finding of guilt in this matter. The Carrier's burden in matters such as this is not proof beyond a reasonable doubt, but merely the production of substantial evidence to support the discipline assessment, which has been defined in prior awards as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Here, we believe that the evidence was such that a reasonable mind could accept the conclusion urged by the Carrier that Claimant entered the HTUA speed restriction at more than 10 mph above the maximum allowable speed, eventually reaching 15 mph over the maximum allowable speed. The event continued for over nine miles, which is not insignificant. Claimant in fact admitted his violation, and it has been held in countless awards that an employee's admission of guilt is sufficient to meet the Carrier's burden of proof in these matters. We find no reason to reach a different conclusion here.

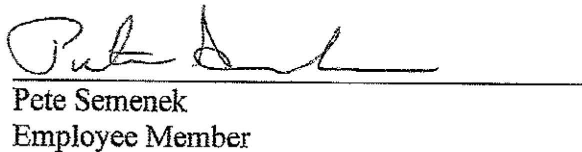
We also find no mitigating circumstances which would relieve Claimant of his responsibility to comply with the restriction. We are not unsympathetic to the circumstances described by the Organization, but the record does reflect that Claimant was aware he was operating a key train and of the HTUA restriction, but he simply forgot about the restriction until he was well into it. The Organization's points regarding the potential benefits of PTC programming updates, which apparently were supported by the Carrier witness, may well be valid, but we do not believe it is our function to rule on or opine about what technology potentially could be put in place. We therefore are unable to find that the lack of programming in PTC regarding HTUAs lessens Claimant's obligation to be aware of upcoming restrictions which are clearly identified in the timetable.

Having found that the rule violation was established, the Board turns to the level of discipline assessed. To overturn the Carrier's assessment would require the Board to find that the Carrier

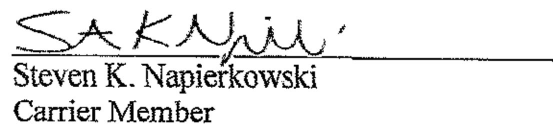
acted arbitrarily or capriciously so as to constitute an abuse of discretion. We concur with the Carrier that compliance with speed restrictions in HTUAs is essential in light of the potential for significant consequences. The 30-day suspension is consistent with the Carrier's discipline policy for such an event, and it is consistent with the certification revocation period. In these circumstances, we are unable to find that the Carrier's actions were an abuse of discretion. Therefore, we will not substitute our judgment for the Carrier's now.

AWARD: Claim denied.

Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 360

Carrier File No. IC-BLET-2022-00146

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Terrill Green on June 7, 2022, following the formal investigation held on May 12, 2022. 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, person leave days, and all other employment related benefits that he would have received while in active service for the alleged violation of USOR L – Communication and Electronic Devices.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On May 12, 2022, Claimant Terrill Green was the engineer on train L51171-12. At approximately

1645 hours, Claimant was involved in a PTC enforced stop, which generated an automatic email notification to a Carrier SLE, which included the inward facing camera footage from the time of the incident. The SLE reviewed the footage, and he observed Claimant using his personal electronic device while he was operating the locomotive.

By notice dated May 17, 2022, Claimant was directed to attend a formal investigation for the purpose of ascertaining the facts in connection with the unauthorized possession of an electronic device in connection with the incident described above. The hearing was held May 25, 2022, at which Claimant admitted his guilt. Consequently, Claimant was found to be in violation of USOR L – Communication and Electronic Devices, and by notice dated June 7, 2022, he was dismissed from service.

In light of Claimant's candid admission to the violation of Rule L, the Organization does not dispute that the charges were proven. It asserts, however, that in light of Claimant's honesty and remorse, dismissal for the infraction is excessive and unwarranted. The Organization states that the incident was a minor infraction, which the Carrier's own discipline policy describes as a Level 2 infraction rather than a dismissal offense. It maintains that the only thing on Claimant's work record which should be considered is a stand-alone dismissal for a violation of Rule H, which resulted in an award which reinstated Claimant to service. The Organization also cites other awards which held that mitigating factors warranted reduction or removal of discipline for Rule L infractions, and it concludes that, in light of Claimant's 15 years of service, the harsh and excessive discipline for this infraction likewise should be set aside.

The Carrier, on the other hand, asserts that the record contains substantial evidence to support the discipline assessed. It states that the evidence, including Claimant's admissions, clearly established that Claimant violated Rule L, when he was observed using his personal electronic device while operating the locomotive.

The Carrier avers that the rule in question is designed for the safe operation of the railroad and compliance with FRA regulations. It asserts that the rule is in place as a result of employees being

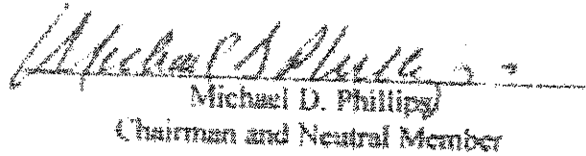
distracted by their electronic devices, which puts them at risk for serious incidents, including injuries and fatalities. The Carrier states that by failing to adhere to the rule requirements, Claimant committed a Level 2 Violation, which is an incident which is serious and/or has the potential to result in an accident or incident. It avers that Claimant is not being dismissed for this single violation, however, but that dismissal was warranted when Claimant's prior discipline record was considered. It points to Claimant's dismissal in August of 2019 for a Rule H violation, and it notes that the violation stayed on his record when he was returned to service without backpay in April of 2021. The Carrier maintains that the subsequent violation just more than a year after being returned on what was essentially a leniency basis meant that he was facing dismissal again. It avers that the assessment here is appropriate in light of the nature of the violation, Claimant's record, and the policy guidelines, and it concludes that the discipline assessment should be upheld.

We have carefully reviewed the record in this case and the parties' arguments, and we find that the Carrier has met its burden of establishing by substantial evidence that Claimant was in violation of the cited rule. The facts of the matter are not really in dispute. Still shots from the video clearly show Claimant with his illuminated personal electronic device in his hand while he was operating the locomotive. Claimant himself readily admitted that he had his phone in his hand, and that he was in violation of Rule L, essentially ending our inquiry into the sufficiency of the evidence necessary to support the charge.

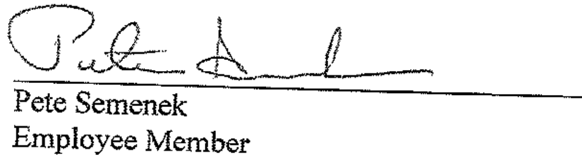
It appears that the only real question before us is the level of discipline assessed for the proven violation. Although the Organization notes prior awards which have reduced or removed discipline after finding mitigating circumstances in connection with such violations, we find no such circumstances present here. Those cases for the most part involved mitigating circumstances and employees with clean discipline records, or at least records which did not contain a recent reinstatement without backpay from a previous dismissal. Claimant's record, on the other hand, contains just such an entry. Claimant's honesty and acceptance of responsibility is commendable, and perhaps if we were to be required to set the discipline level *de novo*, we might opt for a lesser sanction, but that is not our function. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion.

There is no question that electronic devices can be a serious distraction in the work environment and that significant incidents have been associated with them, and on this record, we cannot find that the Carrier's actions for such an offense, when Claimant's discipline history was considered, were an abuse of discretion. Therefore, we will not substitute our judgment for the Carrier's now.

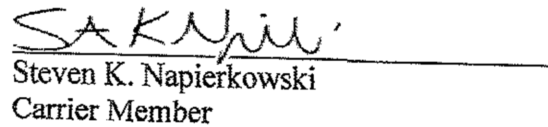
AWARD: Claim denied.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 361

Carrier File No. IC-BLET-2022-00146

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Warren Suggs for the discipline of 15 Days actual suspension from service (June 27, 2022 through July 11, 2022). This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, for alleged violation of USOR L – Communication and Electronic Devices.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On May 31, 2022, Claimant Warren Suggs was the engineer on train A41971-31, operating between Geismar, Louisiana and Jackson, Mississippi. A Carrier SLE received an automatic notification that Claimant's train had been placed in emergency, prompting him to review event recorder data and video from the inward facing camera on the locomotive. He saw Claimant take a black case from his pocket and then swap out a green hearing protection ear plug in his right ear with a personal electronic earbud from the case, and then manipulate what appeared to be a smart watch. When a transportation manager asked Claimant on his return trip if he had the black case

with the electronic earbud so he could take a picture of it, Claimant said he did not have it on him, despite it being in his grip on the floor.

By notice dated June 3, 2022, Claimant was directed to attend a formal investigation for the purpose of ascertaining the facts in connection with the unauthorized possession of an electronic device in connection with the incident described above. The hearing was held June 14, 2022, after which Claimant was found to be in violation of USOR L – Communication and Electronic Devices, and by notice dated June 27, 2022, he was assessed a 15-day suspension.

The Organization first notes that there is no indication that anything Claimant had done caused the train to go into emergency, although the train problems prompted the video review. Regarding the earplugs, the Organization cites Claimant's testimony that the black ear bud was not operational, and that he had obtained it from his daughter the year before, when she was going to throw it away, to use as hearing protection only. It notes his testimony that the company-supplied green plugs are not always available, and that he had used the black buds over that period as a backup because they had a good fit and seal against noise. It also refers to his testimony that he was changing out from the green plugs because they had become sweaty during the trip and were irritating him.

The Organization also challenges the SLE's assertion that Claimant was wearing a smart watch. It notes that the SLE did not interview Claimant about personal electronic devices, and it states that the video does not show the watch glowing to indicate that it was other than an ordinary watch. It also points out that the transportation manager who did interview Claimant did not notice a smart watch, nor did he ask Claimant what kind of watch he had.

The Organization states that Claimant's work record prior to this incident is excellent, with only a contested letter of reprimand, and it urges that assessment of a 15-day suspension is excessive for a minor rules infraction that Claimant clearly misunderstood. The Organization cites prior on-property awards which reduced discipline for Rule L infractions, and it concludes that the assessment here should be set aside.

The Carrier, on the other hand, asserts that the record contains substantial evidence to support the discipline assessed. It states that the evidence, including Claimant's admissions, clearly established that Claimant violated Rule L, which requires that electronic devices be not only powered off, but properly stowed. The Carrier states that Claimant's defense that the earbud was not in working order is suspect, considering that he was elusive and deceitful when he was asked by the transportation manager to see the devices. It states that, while the working status of the electronic devices is not determinative of a rule violation, Claimant's credibility on that point is called into question by his less than forthcoming answers to the questions of the transportation manager. The Carrier similarly questions the credibility of Claimant's assertions regarding the availability of company provided hearing protection or the comfort level of that hearing protection.

The Carrier states that there is no evidence to support Claimant's contention that he had been wearing them in the presence of managers during the prior year, but it adds that this is also irrelevant. It states that Claimant admitted the earbuds were made to be electronic devices and that they were in working order at one point, and it asserts that the requirement in Rule L that electronic devices be stowed does not differentiate between working and non-working electronic devices.

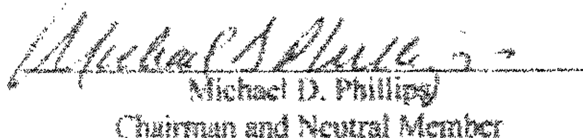
The Carrier avers that the rule in question is designed for the safe operation of the railroad, and it asserts that the rule is in place as a result of employees being distracted by their electronic devices, which puts them at risk for serious incidents, including injuries and fatalities. The Carrier states that by failing to adhere to the rule requirements, Claimant committed a Level 2 Violation, which is an incident which is serious and/or has the potential to result in an accident or incident. The Carrier avers that the 15-day suspension is appropriate in light of the nature of the violation and the policy guidelines, regardless of whether the letter of caution is considered, and it adds that Claimant could have waived the hearing and accepted a record suspension with no monetary loss. The Carrier concludes that the discipline assessment should be upheld.

We have carefully reviewed the record in this case and the parties' arguments, and we find that the Carrier has met its burden of establishing by substantial evidence that Claimant was in violation

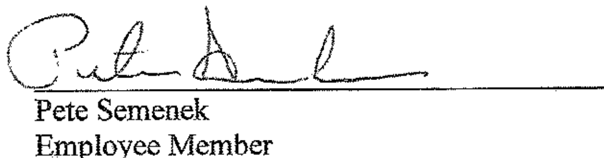
of the cited rule. Although we concur with the Organization that the evidence is insufficient to establish that Claimant was wearing a smart watch, there is no question that Claimant used electronic earbuds, which were the focus of the inquiry. Whether they were functioning or not at the time is not in our view determinative of whether a violation of Rule L was established. That rule requires electronic devices to be stowed in circumstances such as these, regardless of whether they are turned on.

We next turn to the level of discipline assessed. There is no question that electronic devices can be a serious distraction in the work environment and that significant incidents have been associated with them. In this particular instance, however, we believe that circumstances mitigate against imposition of an actual suspension. We agree with the Carrier that Claimant's responses when questioned by the transportation manager were less than forthcoming, and that he did not serve himself well by his hyper-technical contention that he did not have the buds "on him." Nevertheless, the issue is not Claimant's level of cooperation with the manager, but whether the circumstances of his use of the earbud warranted a 15-day suspension. As the Organization notes, prior awards have addressed the specific circumstances of such violations, and we believe it is appropriate to do so here as well. Based on the specific facts of this case, we find that the matter would be adequately addressed by a Level 1 letter of reprimand rather than a suspension, and that Claimant should be compensated for time lost during the 15-day suspension assessed.

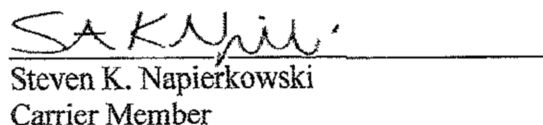
AWARD: Claim sustained in accordance with the findings.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023

Case No. 362

Carrier File No. IC-BLET-2022-00070

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Jeremy Wilborn spread pay claim. The grievance brought forward makes a claim for spread pay for all CN/IC Engineers pursuant to Article 8, Section 1, Paragraph C of the Collective Bargaining Agreement which states you will go on spread pay 2 hours after the close of your spread.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

During the time frames relevant to this case, Claimant Jeremy Wilborn was assigned to job J3J302, with an advertised calling window of 05:01 to 09:01.

On January 16, 2022, Claimant listed from his home terminal of Jackson, Mississippi at 09:00, and he tied up at the away from home terminal of Memphis, Tennessee at 21:01. Claimant was rested at 07:02 for a 09:02 list, but he was not listed until 17:00 on January 17, 2022 for a train back to his home terminal. Upon arriving in Jackson, Claimant worked until the termination of his hours of service, and he tied up at 05:13.

Per HOS, Claimant's rest was pushed back to 15:26 for a 17:26 list. Claimant was then listed at 17:35 on January 18, 2022. The Carrier paid Claimant 9 minutes spread time for the difference between the time Claimant was rested and when he was listed.

Claimant submitted a time claim seeking spread pay from 11:00 until he was listed for the train at 17:35, or 6 hours and 25 minutes. The Carrier denied the claim due to Claimant's undisturbed rest not ending until 15:26.

The Organization submitted an appeal, stating that the applicable agreement provides that spread pay starts two hours after the close of the advertised spread, but that there is no provision in the agreement to adjust that pay to account for when an engineer is rested.

The Carrier denied the claim, maintaining that a rule violation had not been proven. It stated that the intent of the agreement was that an engineer would receive spread pay for the time after the assigned window that he or she is available to be called but is not called for duty. It argued that, as Claimant was not available to be called until he was rested, he was not entitled to spread pay for the time he could not have been called to work. It posited that the Organization's position could result in an engineer being paid both spread time and actual duty time simultaneously in certain scenarios.

The parties progressed the claim through the usual process on the property, including conference, but they were unable to resolve the dispute. It now comes to us for resolution.

The agreement in question provides in pertinent part as follows:

"**ARTICLE 8 – JOB VACANCIES AND BIDDING**

Section 1 Regular Assignments and Extra Boards

(C) Regular assignments will be bulletined with a four (4) hour calling window or an assigned start time at the home terminal. The Company may adjust the starting time of an assignment

within the designated spread. In the event a regular assignment is called to report for duty or annulled two hours or more beyond the close of its advertised spread time, the Engineer will be considered on pay two (2) hours after the expiration of his advertised spread time. In the event the requirements of service necessitate calling an Engineer prior to the opening of his advertised spread time, the Engineer will be paid five (5) hours at the basic daily rate. (Q&A)

Example 1	Engineer A has an advertised spread time to start between 10:00 and 14:00 hours. Engineer A is called at 14:00 for a 17:00 start time.
Question:	What time does Engineer A go on pay"
Answer:	For pay purposes only, Engineer A goes on pay at 16:00.

Example 2	Engineer A is called to report for duty at 10:00.
Question:	What time does Engineer A go on pay?
Answer:	10:00.

Example 3	Engineer A is called in advance of his advertised spread time to report for duty at 09:00.
Question:	What time does Engineer A go on pay?
Answer:	09:00. However, in addition to his earnings for that day, Engineer A will be allowed five hours pay at the basic rate.

(i) Engineers in assigned service who are tied up at the away from home terminal shall be run first in, first out among other assigned engineers from the same home terminal and shall run ahead of unassigned engineers from the same home terminal tied up at that terminal."

The Organization contends that the Carrier's denial of spread pay to the extent claimed in these circumstances is unjustified, and that it is an attempt to eliminate any incentive for the Carrier to keep assignments in their assigned spread. It asserts that the agreement was intended to provide additional regularity to its members' lifestyles, and that the spread pay element of the agreement

is intended to incentivize the Carrier to keep crews working inside their bulletined spread.

The Organization denies that the HOS law, and its requirement of undisturbed rest relied on by the Carrier, justifies denial of the claimed pay. It states that the HOS law has been in place for decades, and that the Carrier agreed to the terms of the agreement knowing the law mandates employee rest. The Organization argues that if the parties had intended to discount spread pay for rest, they would have specified so in the agreement, but they did not. It points to Example 1 as describing when the affected engineer's spread pay will start, and it notes that the example is silent as to the engineer's rest or HOS.

The Organization states that there is no language that allows the Carrier to force an engineer out of his spread by failing to relieve him prior to hours of service and then deem him unavailable. It contends that the Carrier's interpretation would write the rule out of the agreement. The Organization denies that the awards cited by the Carrier are applicable, stating that the reason Claimant was not rested was due to the action of the Carrier by waiting almost eight hours after he was rested in Memphis to get him on a train back to his home terminal. It contends that the Carrier's decision to hold Claimant in the Memphis hotel for so long was the Carrier's alone, and it argues that the Carrier cannot then rely on the HOS law to avoid the consequences of that decision.

The Organization asserts that the Carrier's justification for not having Claimant show on his rest in Memphis is unconvincing. It states that the Carrier has run a predetermined train schedule for years, and that Claimant's regular bulletined assignment runs every day of the week at approximately the same time. It also points out that subparagraph (i) of the agreement allows the Carrier to run assigned engineers such as Claimant ahead of unassigned engineers from the same home terminal, which was intended to keep engineers on schedule without penalty to the Carrier and to help prevent spread penalties from accruing.

The Organization denies that any prior actions or inactions impact its right to progress the claim. It states that the priorities of prior administrations with respect to claim progression do not impact

the validity of the claim, just as the Carrier's prior payment of any such claims, as is indicated in a prior award in which a crew was put under pay even though they were not rested, would not be determinative of whether a violation has been established. The Organization maintains that the agreement is meant to be applied as written, citing prior awards for that principle.

The Organization also cites First Division Award 31181 for its finding that a carrier was equitably estopped from asserting that it did not have to pay an employee who was prevented from working due to mandatory rest, when the record indicated that the direct cause of the employee's availability was the Carrier's own actions. It states that the record here proves that the Carrier neglected to return Claimant to his home terminal in a timely manner, thereby causing Claimant to not be rested until 17:26 on the date in question. The Organization avers that the Carrier should be responsible for its own actions, and it requests that Claimant be paid the balance of the spread pay claimed.

The Carrier, on the other hand, maintains that the Organization has not met its burden of proving an agreement violation, citing awards which affirm that it is the Organization's burden to provide probative evidence to support all of the elements of a claim. It states that unsubstantiated statements and allegations do not constitute sufficient proof of an agreement violation, and it contends that the Organization, which is the moving party, has not come forth with evidence to support its contention that Claimant is due money for a period of time he was unable to work due to federal regulations.

With respect to the agreement provision in question, the Carrier states that the Organization's reliance on Article 8, Section 1, Paragraph C is misplaced. It states that the clear intent of the agreement was that an engineer would receive spread pay for being available after the assigned window time, but for whatever reason is not called to report for duty. It states that to suggest otherwise would be contrary to the understanding between the parties at the time the agreement was reached.

The Carrier further asserts that it has the right to offset pay due to the federally mandated unavailability of an employee. It states that when an assigned employee is unavailable for any

reason, other than explicitly excluded by the agreement, the employee's pay is offset correspondingly, and it avers that unavailability for personal reasons or those legislatively mandated justify it in offsetting pay. The Carrier argues that the intent of the RSIA was not to have employees work less for more compensation, and that any such benefit must be bargained.

The Carrier states that arbitral authority supports the position that Federal law supersedes and invalidates conflicting labor contract provisions. It also argues that it has been held that existing labor agreements must be modified to comport with the law and satisfy the intent of the parties in light of the law, citing prior awards as holding that Federal law imposes a limitation on the rights of the parties under their agreements. Among other awards, it quotes Award 71 of PLB 1605, which stated:

> "The Claimant's loss of time was not due to an action by the Carrier that the Carrier was free to take or not take. The loss was due to the Hours of Service Act and consequently, the Carrier cannot be found to have committed any action which contravenes the agreement."

The Carrier posits that, as the agreement was intended to compensate engineers for being available for call after their calling window closed, the fact that the HOS law limits their availability and restricts the Carrier's ability to call them as contemplated in the agreement is through no fault of the Carrier. The Carrier adds that, as the agreement does not begin spread pay for two hours after the calling window closes, spread pay would also not commence until two hours after an engineer is rested and available.

The Carrier further asserts that the claim must failed based on the doctrine of laches. It states that the Organization's lengthy delay in progressing the issue to final adjudication has resulted in a forfeiture of the Organization's right to protest the action in question. The Carrier states that it has been offsetting pay due to unavailability since the RSIA of 2008 was implemented, and it contends that the Organization's failure to progress a claim for almost 14 years bars it from further handling.

Finally, the Carrier asserts that the requested remedy is excessive and without contractual support, as it should not be required to pay an employee who was not available to work or to be called for work. It sets forth a scenario in which an employee would be called late for a window or not tie up until the next window had passed, such that under the Organization's theory the engineer would be entitled to pay for both the time on duty and the spread time simultaneously. The Carrier concludes that Claimant suffered no loss in earnings, as he was paid for all time worked and spread time when he was available. It contends that to allow the claim would result in an unwarranted windfall, and it requests that the claim be denied.

We have carefully reviewed the record and the parties' arguments in this the matter, and we first note that we do not believe the matter is barred by the doctrine of laches. The award relied on by the Carrier on that issue involves far different facts and agreement provisions, and we do not find it instructive. While the apparent delay in progressing claims of this nature could be seen as supporting the Carrier's position that the interpretation urged in the current claim is contrary to the parties' original intent, we do not find sufficient indication that other typical elements of laches, such as prejudice to the nonmoving party, have been established.

With respect to the merits, however, we find that the Organization has not met its burden of proving that Claimant is entitled to the requested spread time payment. There is no question that Claimant was not available to be called for service during the period claimed, and the award authority cited by the Carrier confirms that unavailability due to Federal law may relieve a carrier from having to compensate an employee when he or she is unavailable for that reason.

With that holding, it should be clear that we do not believe the Carrier has carte blanche in this matter with respect to the reason an employee might not be available for service. We believe the authority cited by the Organization, First Division Award No. 31181, sets forth the appropriate analysis of such matters. In that case, an employee was not able to work his yard assignment because he was not rested under HOS until after the beginning of the shift. The record indicated, however, that the reason he was not rested was due to specific Carrier's actions which led to him not being relieved timely. The Board held that, while the Carrier had the right to not pay the

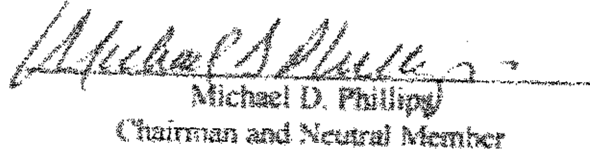
employee, it was estopped from asserting such right due to its own actions, stating:

> "'Equitable estoppel' is '[t]he doctrine by which a person may be precluded by his act or conduct . . . from asserting a right which he otherwise would have had.' Black's Law Dictionary (West, 5th ed.). Here, from this record, the reason the Claimant went into mandatory rest – and, as a result, was required to miss a shift on February 22, 2019 – was because the Carrier abolished the Claimant's relief on February 21, 2019, and it did not timely pick him up so he could be off duty and rested. Under the circumstances, the Carrier had the right to put the Claimant into mandatory rest (indeed, it had the obligation to do so) and therefore further had the right to not pay the Claimant for February 22, 2019, because he missed work. However, because the Carrier was the direct cause of the Claimant being put into mandatory rest and missing his February 22, 2019 assignment, the Carrier is equitably estopped from asserting any right that it did not have to pay the Claimant for February 22, 2019."

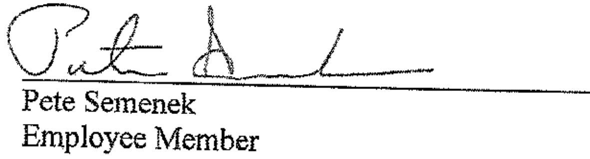
In this case, the Organization has raised a somewhat similar allegation regarding the reason Claimant was unavailable during the calling window in question, i.e., that the Carrier did not get Claimant on a train back to his home terminal in a timely manner. We are unable to conclude, however, that the evidence is sufficient to establish that such circumstances were due to some impropriety or agreement violation, that the Carrier did not take advantage of subparagraph (i) to return Claimant to his home terminal sooner, or that it otherwise improperly delayed Claimant's return trip. Although the Organization contended that the Carrier could have returned Claimant home sooner, we do not believe the record contains sufficient evidence prove that allegation. We conclude that the Organization has not met its burden of proving a violation of the cited agreement in these circumstances, or that there is any other basis to require the requested payment, and

therefore, on this record, we must deny the claim.

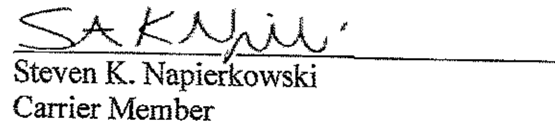
AWARD: Claim denied.



Michael D. Phillips
Chairman and Neutral Member



Pete Semenek
Employee Member



Steven K. Napierkowski
Carrier Member

Dated: August 22, 2023