

**PUBLIC LAW BOARD NO. 7154**

**PARTIES TO THE DISPUTE:**

**Brotherhood of Locomotive Engineers and Trainmen**

**and**

**Canadian National/ Illinois Central Railroad**

**STATEMENT OF CLAIM:**

**Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Robert Marshall March 15, 2017, following the formal investigation held on March 15, 2017. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other employment related benefits, that he would have received while in active service.**

**OPINION OF BOARD:**

On February 16, 2017, Engineer Robert Marshall (Claimant) was working as the engineer on Job JA48871-05 in the Jackson Yard. The crew were performing switching maneuvers when Claimant's locomotive traveled through a derail on the North Lead, resulting in the derailment of, and damage to, locomotive GTW 5822. The Carrier sent Claimant a Notice of Investigation on February 17, 2016, in which it instructed him to appear for a formal investigation into the following:

...to develop the facts and to determine your responsibility, if any, in connection with whether or not you ran over a derail on the North Lead which resulted in damage and derailment of GTW 5822 at approximately 01:55 hours on February 16, 2017 while working as a crew member of JA4887-15, and whether you violated Company rules, regulations and/or policies in connection with the incident....

An investigation was held on March 2, 2017. Subsequent to the investigation, in a letter dated March 15, 2017, the Carrier notified Claimant that he had been found guilty as charged and was assessed the penalty of dismissal from Carrier's service. The Organization filed an appeal on Mr. Marshall's behalf on April 25, 2017, in which it protested the discipline assessed. That appeal was declined by the Carrier on June 21, 2017. The matter was then progressed in accordance with the Parties' Agreement, after which it remained unresolved. It is properly before the Board for adjudication.

The Carrier maintains that Claimant had a fair hearing and that it is clear on the record that Claimant was culpable for the locomotive going through the derail. It asserts that Carrier witnesses confirmed the events leading to the derail. Furthermore, the Claimant admitted that he had been looking away from the direction of travel, and was unable to stop within one-half the distance of his range of vision. The Carrier also argues that operating "long hood forward" is not an excuse for not adhering to the reasonable safety requirements of being able to stop before running through the derail, which he know was ahead of him. In light of his generally poor safety record, the Carrier insists that dismissal was appropriate in this case.

The Organization points out that Claimant was truthful during the hearing regarding the events leading to the derailment. Moreover, it protests he did not hear his conductor say, "that will do" to indicate he should stop his engine short of the derail. The Organization also maintains that Claimant stopped immediately upon seeing the derail, which, according to the

statement read into the record by Claimant's representative was very hard to see. The Organization insists that statement, made by a fellow engineer, demonstrates that the flag indicating the upcoming derail was hard to see at night and the derail itself was rusted, making it also difficult to see. Finally, the Organization points out that contributory to the problem was the inadequate functioning of the Claimant's radio.

The Board has reviewed with care the record in this case, including the transcript and the attendant documentary evidence. There is no confirmation on the record that, had the Claimant been looking forward in the direction of travel, he would not have been able to see the flag for the derail or the derail itself. Claimant's own admission of looking away from the direction of travel confirms his predictable inability to see the warning flag or the derail in order to stop in time, irrespective of their alleged "reduced visibility" or "rust". Under the circumstances, and in view of Claimant's prior discipline record, we find no basis upon which to overturn Carrier's assessment of discipline in this case.

AWARD

Claim denied.

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Marcus J. Orup*  
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Organization Member

*John L. Dwyer*  
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Carrier Member

Dated April 17, 2018

**PUBLIC LAW BOARD NO. 7154**

**PARTIES TO THE DISPUTE:**

**Brotherhood of Locomotive Engineers and Trainmen**

**and**

**Canadian National/ Illinois Central Railroad**

**STATEMENT OF CLAIM:**

**Claim of CN/IC Engineer James Wilson for removal of unwarranted discipline of 20 days actual suspension for the alleged violation of rules, regulations and/or policies in connection with information indicating that he violated CN Rules, regulation and/or policies on July 21, 2016 for allegedly violated USOR L—Communication and Electronic Devices.**

**OPINION OF BOARD:**

On the date of the incident leading to the present claim, July 21, 2016, Engineer James Wilson (Claimant) was working as an engineer on assignment R 91471-20. At approximately 0200 hours Claimant used his cell phone to call for assistance for an injured conductor. On July 22, 2016, the Carrier sent Claimant a Notice of Investigation instructing him to appear for a formal hearing into the following matter:

...to determine your responsibility, if any, and whether you violated any company rules, regulations and/or policies in connection with when you allegedly had a personal electronic device in use in the cab of locomotive IC 9626 while working inside the Memphis Intermodal Facility, at approximately 0200 hours, on Thursday, July 21, 2016, while working as engineer on assignment R 91471-20....

A formal investigation was held on August 1, 2016. Following that investigation, the Carrier notified Claimant by letter of August 11, 2016, that he had been found guilty as charged

and was assessed 20 days' actual suspension from service, from July 22, 2016 through August 10, 2016. The Organization appealed the discipline assessed on September 12, 2016. That appeal was declined by the Carrier on November 10, 2016. The claim was then progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute. It is properly before the Board for resolution.

The Carrier maintains that evidence on the record establishes that Claimant was clearly in violation of Canadian National/Illinois Central US Operating Rules (USOR) General Rule L – Communication and Electronic Devices, since he admits to having a personal electronic device in use in the cab of his locomotive. It notes that while Claimant insists that he was allowed to have a cell phone in the cab; the regulations specify that in the cab of an engine, any personal electronic device is to be turned off and stowed. The Carrier disputes Claimant's allegation that he could not use the radio because of erratic service, and insists there is no hard evidence to support his allegation on this record. In light of Claimant's prior disciplinary record, the Carrier contends that the discipline assessed was appropriate.

At the outset, the Organization notes that Carrier actually held Claimant out for 21 days, not the 20-day suspension he was assessed. It asks that the extra day be included in any reimbursement to Claimant. With respect to the merits of the case, the Organization maintains that Claimant was reasonably concerned about getting immediate aid to his injured conductor in a yard where radio communication is poor. Rather than use the unreliable radio, he used his own cell phone to call for assistance for the injured conductor. In support of its position on this point, the Organization points to the second paragraph of USOR rule L, which states that "[electronic devices] may be used in place of the radio, when radio failure occurs".... It also

notes that until he used it to aid his co-worker, Claimant's cell phone was powered off and in his work bag. The Organization contends that there is no basis for disciplining Claimant for taking appropriate actions under the extreme circumstances.

The Board has carefully read the transcript of the formal investigation, as well as the documentary evidence on the record. We concur with the Carrier that use of any personal electronic device in an engine cab is generally in violation of the USOR rule cited. However, the Organization has made a credible case for the proposition that Claimant feared that the prior difficulties in contacting a Yardmaster or Trainmaster would imperil his ability to get help for the conductor if he attempted to use the radio (Tr. pp. 48-49.) Moreover, the existence of the radio "dead zone" was confirmed by the injured conductor (Tr. pp. 55-56). It appears clear from this record that Claimant was not using the cell phone for personal use, or for any other purpose except to obtain assistance for an injured co-worker. Carrier has not countered the Organization's claim that the train was in a radio "dead zone" (Tr. p. 55, lines 20-22). Under the circumstances we do not find support on this record for Carrier's assessment of discipline. The claim is sustained including the single day difference between the discipline assessed and the days actually served.

AWARD

Claim sustained.

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Marcus J. Duff*  
Organization Member

*John E. Duff*  
Carrier Member

Dated April 17, 2018



PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Canadian National/ Illinois Central Railroad

STATEMENT OF CLAIM:

Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Timothy Wooten on September 13, 2016, following the formal investigation held on September 08, 2016. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record result from his dismissal from service. This claim shall include pay for all time lost, restoration of all railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other employment related benefits, that he would have received while in active service.

OPINION OF BOARD:

At the time of the incident leading to this claim, Engineer Timothy Wooten (Claimant) was assigned to job assignment E29571-20 near South Money, Tennessee, as Engineer, on August 20, 2016, and at about 1340, placed his train into emergency. On August 23, 2016, the Carrier sent Claimant a Notice of Investigation directing him to appear for a formal investigation into the following matter:

...to develop the facts and to determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies, in connection with when you allegedly placed the train in emergency at South Money, resulting in a

knuckle and causing delay to Q 19491-19 at approximately 1340 hours, on Saturday, August 20, 2016, while working as crew members on assignment E 29571-20.

The formal investigation was held on September 8, 2016. Following the investigation, in a letter dated September 13, 2016, the Carrier notified Claimant that he had been found guilty as charged and was dismissed from Carrier's service. The Organization filed a claim in which it appealed Claimant's discipline on September 27, 2016. The Carrier denied that claim on November 23, 2016. The matter was then progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained unresolved. It is properly before the Board for resolution.

The Carrier contends that the charges against Claimant have been proven, and he was found to be in violation of Illinois Central Railroad US Air Brake and Train Handling (ABTH) Rule 300 – Train Handling General Procedures, Rule 302 – Throttle, Rule 304 – Dynamic Brake, and Rule 306 – Automatic Brake. It notes that Carrier witnesses confirmed that Claimant had improperly handled his train when he passed a signal displaying Approach Indication at Milepost 111.6. The Carrier asserts that, rather than prepare to stop at the next signal at South Money at 114.2, Claimant failed to use "proper forward planning" and was forced to place his train into emergency – causing a knuckle to break and resulting in a delay to the train. The Carrier also points out that Claimant's negligence in planning his required stop could very well have caused a collision with the Q 195 train ahead of him, owing to the poor operation of his locomotive. Finally, it insists, in light of Claimant's previous discipline record, which contains safety violations, the discipline was warranted and should stand.

The Organization at the outset protests that requested documents were not supplied to

the Organization when requested, and thereby prevented the formal investigation from being truly fair. It argues that Claimant's representative, therefore, had too little time to prepare for Claimant's defense against the charges leveled against him. Accordingly, the Claimant did not, in fact and according to the Parties' Agreement receive a fair investigation, and the instant claim should be sustained on procedural grounds. With respect to the merits of this case, the Organization points out that the rules Carrier cites as having been violated cannot be applied in this case, because Claimant's train was in an emergency situation and those rules do not apply. Furthermore, the Organization protests that the Carrier did not discipline Claimant's conductor in relation to the incident at issue, but rather prejudged Claimant as being solely responsible. It also points to Claimant's testimony that his train was on a curve and the red signal was difficult to see – a condition made worse by the angle of the sunlight on the signal itself. Finally, the Organization points out that while the emergency stop resulted in a knuckle break, the train did not pass the red signal or in any way interfere with train Q 195, let alone cause a collision.

The Board first considers the Organization's protest regarding failure of the Carrier to provide the evidentiary documents to the Organization in a timely fashion. A careful reading of the transcript indicates that, although the Carrier did not provide the documents in advance, it did allow the Organization time to review each as it was placed on the record via a series of breaks (not time restricted by the Hearing Officer) in the proceedings. Moreover, none of the documents provided contained withheld exculpatory information, and the Claimant's representative managed to present a full and informed defense, despite the late offer of Carrier's hearing exhibits. Accordingly, we do not find that the proceedings were fatally flawed and we progress to consideration of the merits in this matter.

There appears to be no dispute on this record regarding the basic facts of the incident leading to Claimant's discipline. His train did pass the caution signal, and he clearly did not plan his forward movement to stop at the indicated stop signal further along the track. With respect to the Carrier's failure to charge the Conductor, there is unrefuted evidence on the record that he was not in charge of the motion of the train at the time, and that the Conductor warned the Claimant that he should be preparing to stop when he observed the speed of the train following the caution signal. Finally, Claimant's prior discipline record contains several safety violations, including failures to control speed, and clearly indicates that Claimant has not learned from the progressive discipline administered to date. Under the circumstances, we find no basis upon which to overturn Carrier's assessment of discipline in this case.

AWARD

Claim denied.

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Murray D. [Signature]*  
Organization Member

*[Signature]*  
Carrier Member

Dated April 17, 2018

**PUBLIC LAW BOARD NO. 7154**

**PARTIES TO THE DISPUTE:**

**Brotherhood of Locomotive Engineers and Trainmen**

**and**

**Canadian National/ Illinois Central Railroad**

**STATEMENT OF CLAIM:**

Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Matthew Hudgins on October 26, 2016, following the formal Investigation held on October 13, 2016. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other employment related benefits, that he would have received while in active service.

**OPINION OF BOARD:**

On October 3, 2016, the date of the incident leading to the above claim, Engineer Matthew Hudgins (Claimant) was assigned as the engineer on Train M39671-3, operating on Carrier's Fulton Subdivision. The Fulton line segment passes through territory designated as a High Threat Urban Area (HTUA). An HTUA requires lower speed limits for trains carrying hazardous material lading. By letter of October 3, 2016, the Carrier sent Claimant a Notice of Investigation (NOI) requiring him to appear for a formal investigation. The NOI read in pertinent part as follows:

...The investigation is being held to develop the facts and to determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies when the engineer failed to control the speed of the train and exceeded the maximum authorized speed...of the train within the HTUA on the Fulton Subdivision between mp 387.9 and 369.4 at approximately 0615 hours, on Monday, October 3, 2016 while working as [a crew member] on assignment M 39671-03.

A formal investigation was held on October 13, 2016. Subsequent to the investigation the Carrier sent Claimant a letter on October 26, 2016, informing him that he had been found guilty of violating "System Special Instructions Page 13, Equipment Restrictions as per updated Region Quarterly Bulletin Reissue dated February 22, 2016, US Hazmat Instructions, Page 34, Item b, and CN Timetable Central Division #7 Fulton Subdivision Page 42," and was assessed the penalty of dismissal from Carrier's service. The Organization filed a claim on Mr. Hudgins behalf and the Carrier denied that claim. The matter was then progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute. It is properly before the Board for resolution.

The Carrier contends that oral testimony and documentary evidence on the record support a finding of Claimant's guilt. It notes that there is no reasonable doubt that, in light of that testimony and evidence, Claimant exceeded the speed limit between Mile Post 387.9 and Mile Post 369.4 on the date in question. The Carrier also insists that a review of Claimant's personal file reveals that in his relatively short tenure he has a poor safety record, including one prior dismissal and leniency reinstatement. In sum, the Carrier urges that the claim be denied in its entirety.

The Organization points out that even if Claimant were exceeding the speed limit,

there was no resulting accident or injury. It asserts that there was no visible indication that the track length in question was an HTUA area. The Organization also points out that the Conductor on Claimant's train received only a 30-day actual suspension, which indicates that Claimant received disparate and prejudicial treatment. Accordingly, the Organization urges that the claim be sustained or, at a minimum, the penalty reduced.

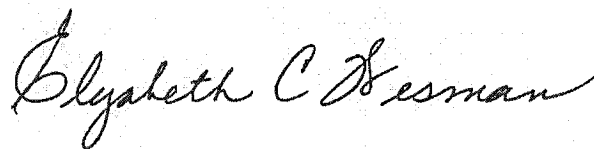
The Board has reviewed the testimonial evidence gathered at the formal investigation as well as the documentary evidence presented – including the objective data downloads from Claimant's train (Tr. pp. 19-40). We note that Claimant admitted he was speeding in the area at issue, and offered no explanation for his conduct. He also testified that he had in his possession copies of the relevant rules and regulations regarding his responsibilities as Engineer on that particular section of track. Moreover, he had just been reinstated by Carrier on a leniency basis after a dismissal for a safety violation fewer than three months prior to the incident leading to this claim.

In light of the foregoing, it is clear to the Board that Claimant was not warned or chastened by the prior dismissal and leniency reinstatement. The Organization's argument that no one was injured and no accident occurred because of Claimant's speeding violation does not excuse behavior that could very well lead to such results. Nor do we find that the fact that the Conductor received a lesser penalty, *per se* indicates disparate treatment. The Conductor has a nearly unblemished discipline record – in contrast to the Claimant. Under the circumstances, the Board finds no basis upon which to overturn the Carrier's assessment of discipline.



AWARD

Claim denied.



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Elizabeth C. Wesman, Chairman



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Organization Member



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Carrier Member

Dated April 17, 2018

**PUBLIC LAW BOARD NO. 7154**

**PARTIES TO THE DISPUTE:**

**Brotherhood of Locomotive Engineers and Trainmen**

**and**

**Canadian National/ Illinois Central Railroad**

**STATEMENT OF CLAIM:**

**Claim of CN/IC Engineer Edward Manis III consisting of 30 days actual suspension from service (October 5, 2016 through November 3, 2016). This claim is for compensation of all loss of earning while out of service, all notations of this discipline expunged from his work record, plus an additional day's pay for attending the hearing for allegedly violating System Special Instructions Page 13, Equipment Restrictions as per updated Region Quarterly Bulletin Reissue dated February 22, 2016, US Hazmat Instructions Page 34, Item b, and CN Timetable #7 Page 55 Yazoo Subdivision.**

**OPINION OF BOARD:**

At the time of the incident leading to this claim, Engineer Edward Manis III (Claimant) was assigned as an Engineer on assignment U-76052 (a key "Hazmat" train) traveling on a route that included the Yazoo Subdivision High Threat Urban Area (HTUA), on October 5, 2016. In a letter dated October 7, 2016, the Carrier sent Claimant a Notice of Investigation instructing him to appear for a formal investigation for the following purpose:

...to develop the facts and to determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies, in connection with when [you] failed to control the speed of the key train and exceeded the maximum authorized speed at the Yazoo Sub HTUA...and...exceed[ed] the maximum authorized speed of the key train at approximately 0600 hours, on Wednesday, October 5, 2016, while working as crew member[] on assignment U 76052-30.

The formal Investigation was conducted on October 17, 2016. Following the investigation, in a letter dated October 26, 2016, the Carrier notified Claimant that he had been found guilty of violating "System Special Instructions Page 13, Equipment Restrictions as per updated Region Quarterly Bulletin Reissue dated February 22, 2016, US Hazmat Instructions Page 34, Item b, and CN timetable #7 Page 55 Yazoo Subdivision." It also notified Claimant that he was assessed the penalty of a thirty-day actual suspension.

The Organization filed a claim on Mr. Manis's behalf on November 11, 2016. The Carrier denied that claim in a letter dated January 5, 2017. That denial was appealed, and the matter was subsequently progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute. It is properly before the Board for resolution.

The Carrier maintains that it has produced sufficient evidence to support its findings of Claimant's guilt. It points out that the Carrier's witness and the irrefutable documentary evidence presented at the investigation, clearly establish that Claimant failed to operate his train at the authorized speed for a key train in the Yazoo Subdivision, given that his train contained hazardous materials. It also notes that Claimant admitted to exceeding the speed limit, but provided no credible explanation for doing so. Further, the Carrier insists, Claimant's previous discipline record warrants the discipline assessed.

At the outset, the Organization asserts that the formal contractual discipline process was fatally procedurally flawed, because the Carrier did not include Exhibit 2G when it sent the Organization the transcript following the hearing. Moreover, prior to the hearing, the Carrier failed to provide the Organization with the documentary evidence it would use to support its position, so the Claimant's representative could be adequately prepared. In addition, the

Organization protests that at the hearing, the BLET representative pointed out that neither he, nor Claimant knew how to read Exhibit 2B (the Wi-Tronix graph) and, rather than explain it to them or have another Carrier witness do so, the Hearing Officer simply "noted" the objection and proceeded with the investigation. Based upon the foregoing, the Organization asks the Board to deny this claim on procedural grounds alone.

Before the Board is able to turn to the merits of this case, it must consider the Organization's procedural objections. In response to the allegation regarding pre-hearing exchange of documents, the Carrier contends that the Hearing Officer allowed ample time at the hearing for the Organization Representative to review the documents with Claimant. It also protests that the Agreement makes no provision for pre-hearing discovery rights. While the Carrier acknowledges it did not send the audio file of the conversation with the dispatcher (Exhibit 2G) along with the transcript of the investigation, that conversation was transcribed verbatim on the transcript and the actual recording was later made available to the Organization on the GTS system.

The Board has reviewed the Organization's procedural objections and the Carrier's response. Our review of the transcript does not suggest that the Hearing Officer was unfair in his rulings, or in his conduct of the hearing. Nor is there a showing that he impeded the Claimant's representative in his examination of exhibits as they were offered. In sum, we do not find that the due process accorded Claimant was fatally procedurally flawed, and will therefore continue to consider the merits of this case.

With respect to the merits of the case before the Board, we note that Claimant admitted he was exceeding the speed limit in the area at issue while in charge of a key train in a high

threat urban area. Within the transcript there is ample testimonial and documentary evidence of that event, and no apparent explanation or documentation from the Claimant that would prove exculpatory in that regard. Moreover, we note that just over a year before this incident, Claimant received a letter of caution regarding his failure to control the speed of a key train in another HTUA, so Claimant cannot claim that he was unaware of his responsibilities when assigned as a key train Engineer. Finally, although Claimant's most recent actual suspension was for a different violation (for which he signed a waiver accepting responsibility), it was, nonetheless, a safety-related violation. In light of the foregoing, we find no basis for overturning the Carrier's assessment of discipline in this case.

AWARD

Claim denied.

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Marcus J. Quispel*  
Organization Member

*John L. Lyddell*  
Carrier Member

Dated April 17, 2018

**PUBLIC LAW BOARD NO. 7154**

**PARTIES TO THE DISPUTE:**

**Brotherhood of Locomotive Engineers and Trainmen**

**and**

**Canadian National/ Illinois Central Railroad**

**STATEMENT OF CLAIM:**

**Claim of CN/IC Engineer Jesse Gantt 10 days actual suspension from service, but was required to serve 30 days actual suspension from service (October 14, 2016 through November 12, 2016) account of invoking 20 days assessed deferred for one year from a prior incident. This claim is for compensation of all loss of earning while out of service, all notations of this discipline expunged from his work record, plus an additional day's pay for attending the hearing for allegedly violating USOR—General Rule I—Duty Reporting or Absence and USOR 300—Rule Books and Timetables.**

**OPINION OF BOARD:**

On the date of the incident leading to this claim September 1, 2016, Engineer Jesse Gantt (Claimant) was assigned to job assignment R95391-01, with a starting time of 1415 hours. On September 2, 2016, the Carrier sent Claimant a Notice of Discipline directing him to attend a formal investigation regarding the following matter:

...to develop the facts and determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies in connection with allegedly reporting late and/or not prepared for duty at approximately 1420 hours on 01 September 2016 for job assignment R95391-01 with an on duty time of 1415 hours.

After a postponement, the formal investigation was held on September 20, 2016. A notice of discipline from the Carrier was sent "Certified Return Receipt Requested" on October 4, 2016, in

which the Carrier informed Claimant that he had been found guilty as charged for two violations (each with a formal investigation on the same day), and was assessed a total of 10-days' actual suspension. The letter also noted that Claimant had been assessed a 20-day record suspension on September 7, 2016 (with a one-year deferral period). With that suspension, Claimant's total suspension became a thirty-day actual suspension. When the "return receipt" was not returned from the October 4, 2016 letter, the Carrier sent Claimant a second notice containing the same information on October 14, 2016 – and commented that "As you have failed to check your mail regularly, the letter of discipline issued October 4, 2016 is amended." In the second letter, the Carrier moved the applicable dates for the span of the 30-day suspension to begin from the date of the second letter, rather than from October 4, 2016.

The Organization filed a claim on Mr. Gantt's behalf on November 11, 2016. That claim was denied by the Carrier on January 5, 2017. The claim was then progressed in accordance with the Parties Agreement, including conference on the property, after which it remained unresolved. It is properly before the Board for adjudication.

It is the Carrier's position that there is no dispute that Claimant was late for duty on the date at issue. It notes that he admitted being late for duty during the course of the formal investigation. The Carrier also insists that it cannot be found that the notice of discipline was mailed beyond the contractual time, simply because Claimant did not return the "return receipt" card. Finally, the Carrier points out that it did not remove Claimant from service for his suspension until the second letter was sent (hence the "amendment" referred to in that letter).

The Organization protested the combination of two penalties into one letter of discipline. It also argues that it is clear from the failure of the Carrier to receive the "return receipt" card



from Claimant, that he never received the notice of discipline, and therefore the later notice cannot be considered timely. The Organization insists that a notice of discipline sent to Claimant 24 days after the formal investigation is a clear violation of the Agreement and is, therefore invalid. Under the circumstances, that negates the 30-day actual suspension and Claimant should be reimbursed for all 30 days he served.

The Board has carefully reviewed the transcript of the hearing in this case, as well as the documentary evidence presented on the record. We note that Claimant acknowledged receipt of both the initial Notice of Investigation and the subsequent postponement letter. In light of that fact, we find credible the Carrier's theory that Claimant either did not pick up his mail or refused to return the original "return receipt" post card. Accordingly, we do not find that that the notice of discipline was rendered void. Nor do we find that the discipline assessed for the combined infraction was excessive or arbitrary, or required two separate notices of discipline to be sent. Thus, we find no basis upon which to overturn Carrier's assessment of discipline in this case.

AWARD

Claim denied.

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Mark J. Dref*  
\_\_\_\_\_  
Organization Member

*John W. Goldy*  
\_\_\_\_\_  
Carrier Member

Dated *April 17, 2018*  
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PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Canadian National/ Illinois Central Railroad

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Jesse Gantt 10 days actual suspension from service, but was required to serve 30 days actual suspension from service (October 14, 2016 through November 12, 2016) account of invoking 20 days assessed deferred for one year from a prior incident. This claim is for compensation of all loss of earning while out of service, all notations of this discipline expunged from his work record, plus an additional day's pay for attending the hearing for allegedly violating USOR—General Rule I—Duty Reporting or Absence and USOR 300—Rule Books and Timetables.

OPINION OF BOARD:

This claim is a companion claim to that at issue in Award 213 on this Board. The infraction at issue is the alleged failure of Claimant to have in his possession a current copy of System Operating and/or Chicago Zone Bulletins on September 1, 2016, a violation of USOR Rule 300-Rule Books and Timetables. A notice of investigation was sent to Claimant by the Carrier on September 2, 2016, directing him to appear for a formal investigation regarding that charge. Following a postponement, the investigation was held on September 20, 2016. Subsequent to the investigation, the Carrier notified Claimant on October 4, 2016, that he had been found guilty as charged. Combined with the alleged violation noted in our Award 213, and a 20-day deferred suspension, Claimant's suspension totaled a thirty-day actual suspension.

When Claimant failed to return the "return receipt" card, the Carrier sent a similar notice ten days later on October 14, 2016, and moved the dates of the suspension accordingly. The Organization then filed a claim on Mr. Gantt's behalf. That claim was denied by the Carrier and the matter was progressed according to the Parties' Agreement, after which it remained in dispute. It is properly before the Board for resolution.

The Carrier maintains that witnesses testified without contradiction that Claimant did not have a copy of the Chicago Division System Operating Bulletin on the date in question. He then provided Claimant with a copy in order for Claimant to be able to continue his tour of duty (Tr. p. 35). It also notes, moreover, that Claimant admitted not having the required bulletin in his possession on the date in question (Tr. pp. 38-40). In light of this, the Carrier urges that the claim be denied in its entirety.

The Organization protests that the notice of discipline sent to Claimant on October 14, 2016 was sent too late to be considered valid – thus negating the assessment of discipline. It asks that the instant claim be sustained in its entirety.

For the reasons set forth in detail in our Award 213, we find no basis upon which to overturn Carrier's ultimate assessment of discipline in this case.

AWARD

Claim denied.

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Maxwell Reef*

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Organization Member

*John L. Gold*

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Carrier Member

Dated *April 17, 2018*

PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Canadian National/ Illinois Central Railroad

STATEMENT OF CLAIM:

Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Edward Manis, III on November 22, 2016, following the formal investigation held on November 10, 2016. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other employment related benefits that he would have received while in active service.

OPINION OF BOARD:

On the date of the incident precipitating this claim, November 4, 2016, Engineer Edward Manis III (Claimant), was serving as an Engineer assigned to job assignment R90771-04 at Fleischmann's Yeast. On November 4, 2016, the Carrier sent a Notice of Investigation (NOI) to Claimant in which it directed him to appear for a formal investigation into the following:

...to develop the facts and determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies, in connection with when you were allegedly responsible for a derailment at Fleischmann's Yeast at approximately 0430 hours, on Friday, November 4, 2016, while working as [a] crew member[s] on assignment R 90771-04.

An investigation was held on November 10, 2016. Following the investigation, in a letter dated November 22, 2016, the Carrier notified Claimant that he had been found guilty as charged and was dismissed from the Carrier's service as of that date.

The Organization filed a claim protesting Claimant's dismissal on January 3, 2017. That claim was denied by the Carrier on February 27, 2017. The matter was then progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute. It is properly before the Board for resolution.

The Carrier contends that the charges in the NOI were proven, and that it is clear that Claimant did not operate his train safely. It points out that Carrier witnesses testified that there was no job briefing prior to the shove movement. Moreover, the Carrier notes, the Claimant allowed the Conductor to detrain while the train was moving in excess of four miles per hour. It also protests that the fact that there wasn't a "major" derailment does not hide the fact that a tank car was knocked off its trucks – which does, actually, constitute a derailment. Further, it asserts that the derailment was a result of Claimant not being able to stop his train before hitting the wheel stops. In light of Claimant's prior record, the Carrier urges that the penalty of dismissal was warranted and the claim should be denied.

For its part, the Organization protests that there was no "derailment" in fact. Accordingly, given that the NOI charged Claimant with responsibility for a derailment, the hearing should have been stopped once evidence indicated that no actual derailment occurred. Most significantly, the Organization insists, at the time of the incident at issue, the Conductor was in charge of the train's movement, and he was the eyes and ears of the Engineer, who reasonably relied totally on the Conductor's instructions. It points out that during the

investigation the Conductor admitted that he had been responsible for the mishap at Fleischmann's Yeast (Tr. pp. 96-97).

The Board has carefully reviewed the full transcript of the investigation and the attendant documentary evidence offered on the record. We disagree with the Organization's position that knocking a tank car off its trucks does not constitute a derailment. While perhaps technically true, the fact remains that considerable damage was done to the car, similar to what would have been the result if the car and its trucks had been knocked off the rail. However, we do not find support for the Carrier's assertion that the Claimant was negligent in his movement of the train. It is apparent from the testimony offered and the unrefuted facts of the incident, that the Conductor was responsible for the accuracy of the directions for the train's movement. He communicated incorrect information to Claimant, who had no visual access to the movement, and the Claimant properly repeated the information given back to the Conductor. The communication between the two crew members was proper, but the "message" was incorrect, through no fault of the Claimant. Under the circumstances, we find no basis for sustaining the Carrier's assessment of discipline. Admittedly, Claimant's record is not spotless, but that does not suggest that, *per se*, he is guilty of the particular charges leveled against him in this case.



AWARD

Claim sustained.

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Maureen Ruff*  
Organization Member

*John Goldy*  
Carrier Member

Dated April 17, 2018

PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

**Brotherhood of Locomotive Engineers and Trainmen**

and

**Canadian National/ Illinois Central Railroad**

STATEMENT OF CLAIM:

**Claim of CN/IC Engineer Robert Bodkin for removal of unwarranted discipline of a letter of reprimand issued for the alleged violation of rules, regulations and/or policies in connection with alleged evidence of being in violation of USOR Rule I—Duty Reporting and Absence.**

OPINION OF BOARD:

On October 4, 2016, the Carrier sent Engineer Robert Bodkin (Claimant) a Notice of Investigation (NOI) directing him to appear for a formal investigation for the following purpose:

...to develop the facts and to determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies in connection with information indicating that your absences during the 12-week period prior to and including September 23, 2016 may be in violation of requirements of the Attendance Guidelines.

A formal investigation was held on October 26, 2016. Subsequent to the investigation, Claimant was notified by the Carrier, in a letter dated November 9, 2016, that he had been found guilty as charged and was assessed a Letter of Reprimand.

The Organization filed a claim protesting the Letter of Reprimand on January 5, 2017. The Carrier denied the claim in a letter dated March 3, 2017. The matter was then progressed

in accordance with the Parties' Collective Agreement, including conference on the property, after which it remained unresolved. It is properly before the Board for adjudication.

It is the Carrier's position that Claimant admitted at the formal investigation that he had laid off just prior to two of his personal leave days (PLD's), as noted in the NOI (Tr. p. 31). The Carrier insists that the hearing was fair and impartial, and the fact that Claimant laid off on two occasions adjacent to personal leave days is contrary to the Carrier's attendance policy. Accordingly, the Carrier asserts that the instant claim should be denied in its entirety.

The Organization argues at the outset that the Carrier officer who testified was not from the Attendance Management Center (AMC), had no direct knowledge of the alleged absences and testified only generally regarding his understanding of the attendance policy. Moreover, it points out that Claimant was marking off because of the distinct possibility that if he worked the shift prior to his PLD, he could be stranded before the turnaround trip and miss his PLD entirely. In defense of this point, the Organization notes that in Article 18, Paragraph B, IV, the Collective Bargaining Agreement states: "Subject to the needs of service, an Engineer scheduled for...PLD may lay off up to twenty-four hours in advance of the day at the home terminal in order to avoid being at the away-from-home – 29 terminal when the PLD begins." In light of the foregoing and Claimant's 19-year nearly spotless discipline record, the Organization insists that the claim should be sustained.

The Board has reviewed the transcript of the formal investigation and documentary evidence presented carefully. In particular we paid particular attention to pages 31 ff. of the transcript and the language of the Parties' CBA at Article 18. There is no dispute that Claimant laid off each of the days prior to his two PLD's as asserted in the NOI. However, he made no

secret of the fact when he called the AMC that he was doing just that, and received no contrary instructions from the AMC. Moreover, realistically, if he were given a trip on the day preceding his PLD's, there was a decent probability that he could be stranded at a remote terminal and miss all or part of the PLD to which he was contractually entitled. Finally, an examination of Claimant's Personal Work Record shows he had one discipline more than 16 years prior to the incidents leading to this claim, and not so much as a letter of reprimand since. We do not, therefore, find that Carrier's assessment of a letter of reprimand in this instance can be considered justified.

AWARD

Claim sustained.

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Maureen Quaf*  
Organization Member

*John L. Goldy*  
Carrier Member

Dated April 17, 2018

PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Canadian National/ Illinois Central Railroad

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Stephen Weydert 34 days actual suspension from service (September 3, 2016 through October 6, 2016). This claim is for compensation of all loss of earning while out of service, all notations of this discipline expunged from his work record, plus an additional day's pay for attending the hearing for allegedly violating USOR Rule 0100—Rules, Regulations and Instructions, and CN-United States Attendance Guidelines for Unionized Employees Effective May 24, 2013.

OPINION OF BOARD:

On September 1, 2016, the Carrier sent Engineer Stephen Weydert (Claimant) a Notice of Investigation (NOI) directing him to appear for a formal investigation into the following matter:

...to develop the facts and to determine your responsibility, if any, in connection with wherein you allegedly missed a call for job assignment M34641-28 at approximately 1134 hours on August 29, 2016, and whether you violated any Company rules regulations and/or policies in connection with the incident.

An investigation was held on September 21, 2016. Following the investigation, Claimant was notified that he had been found guilty as charged, and was assessed a 34-day actual suspension (time served). The Organization filed a claim in which it protested the discipline. That claim was denied and the matter was progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute.

Accordingly, it is properly before the Board for adjudication.

The Carrier asserts that the Claimant has admitted he missed the call on the date in question, and that he deliberately refused to answer that call. Thus, it insists, discipline was warranted. It also points out that it offered Claimant the opportunity to participate in the Company's EAP program, in exchange for which the 34-day actual suspension would be converted to a leave of absence, but Claimant declined that offer.

The Organization notes that two investigations were held for two similar charges (the second one the subject of Award No. 218 on this Board), but there was only one discipline letter covering both. According to the Organization, that disadvantaged them in determining which violation was charged and what discipline it was appropriate to grieve. It also points the Board to extenuating circumstances in this case and the next.

Under the unique circumstances of this case, and *without precedent* for any future similar cases, we do not find that Carrier's assessment of discipline was warranted. The claim is sustained.

AWARD

Claim sustained.

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Maureen O'Neil*  
Organization Member

*John A. Gold*  
Carrier Member

Dated April 17, 2018



PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Canadian National/ Illinois Central Railroad

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Stephen Weydert 34 days actual suspension from service (September 3, 2016 through October 6, 2016). This claim is for compensation of all loss of earning while out of service, all notations of this discipline expunged from his work record, plus an additional day's pay for attending the hearing for allegedly violating USOR Rule I—Duty Reporting or Absence, USOR Rule 0100—Rules, Regulations and Instructions, and CN-United States Attendance Guidelines for Unionized Employees Effective May 24, 2013.

OPINION OF BOARD:

This is a companion case to Award No. 217 on this Board. By letter of September 6, 2016, the Carrier sent Engineer Stephen Weydert (Claimant) a Notice of Investigation directing him to appear for a formal investigation for the following purpose:

...to develop the facts and to determine your responsibility, if any, in connection with wherein you allegedly missed a call for job assignment M34641-01 at approximately 1718 hours on September 2, 2016, and whether you violated any Company rules regulations and/or policies in connection with the incident.

The formal investigation was held on September 21, 2016, immediately following the investigation involved in the preceding case (Award No. 217). Claimant was notified by the Carrier on October 6, 2016, that he had been found guilty of this and the previous charge, and that he was assessed a 34-day actual suspension (time served). The Organization filed a claim

protesting this discipline, and that claim was denied. The claim was then progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute. It is, therefore, properly before this Board for resolution.

Positions of the Carrier and Organization are the same as set forth in Award No. 217. Accordingly, they will not be repeated here. In the unique circumstances of this case, and ***without precedence*** for any future similar case, we find that the claim shall be sustained, with the single proviso that Claimant attend the Company's EAP program. If he again refuses to do so, his discipline shall be reduced to a 34-day record suspension and be entered as such in his personal record.

AWARD

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

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Marcus Ruff*  
Organization Member

*John D. Goldy*  
Carrier Member

Dated April 17, 2018

**PUBLIC LAW BOARD NO. 7154**

**PARTIES TO THE DISPUTE:**

**Brotherhood of Locomotive Engineers and Trainmen**

**and**

**Canadian National/ Illinois Central Railroad**

**STATEMENT OF CLAIM:**

Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Stephen Weydert on November 18, 2016, following the formal Investigation held on November 09, 2016. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other employment related benefits that he would have received while in active service.

**OPINION OF BOARD:**

In a letter dated October 20, 2016, the Carrier sent Engineer Stephen Weydert (Claimant) a Notice of Investigation (NOI) in which it instructed him to appear for a formal investigation into the following matter:

...to develop the facts and to determine your responsibility, if any, in connection with wherein you allegedly marked off at approximately 0045 hours on October 20, 2016 after accepting a call at approximately 2355 hours on October 19, 2016 for job assignment M34691-19 with an on-duty time of 0155 hours on October 20, 2016, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

An investigation was held on November 9, 2016. Following that investigation, the Carrier notified Claimant, in a letter dated November 18, 2016, that he had been found guilty as charged and was assessed the discipline of dismissal from Carrier's service as of that date. The Organization filed a claim protesting Claimant's discipline, and that claim was denied by the Carrier. The denial was appealed and the matter subsequently progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained unresolved. It is properly before the Board for adjudication.

The Carrier contends that the charges against Claimant were proven at the formal investigation. It notes that the Operating Rules require an employee who is unavailable to work because of illness or injury to mark-off sick before he is subject to a call for service, and that is not what Claimant did. Based upon the testimony on the record, the Carrier insists, Claimant's violation cannot be in doubt. Further, the Carrier points out that Claimant admitted he marked off purporting to be sick, and then attempted to justify his actions by claiming that he was expecting to work another assignment. Under the circumstances, the Carrier proposes that there is no basis for sustaining the instant claim.

At the outset, the Organization protests that the Carrier had no reason to hold Claimant out of service, pending the investigation, since he was clearly not a danger to himself or his fellow employees, and it urges the Board to refer to Article 29, Paragraph A of the Agreement (Quoted on Tr. pp 32-33). In addition, the Organization maintains that Claimant legitimately thought he was to be given a different assignment, on the M346 territory, and therefore wanted to be rested to accept that position. The Organization notes that Claimant marked off with the AMC and then called his Supervisor of Engineers at approximately 0800 hours to explain what

had happened, and his concern that, since during his training, crew callers had made mistakes not calling him properly (Tr. p. 39), he believed this might be a similar instance of a mistaken call. At bottom line, the Organization insists, Claimant's violation, even if proven, cannot reasonably be said to rise to the level of a dismissible offense.

The Board has reviewed this record carefully, including the testimony and documentary evidence offered at the formal investigation. There really cannot be much dispute that Claimant was guilty of the charges leveled against him. However, under normal circumstances such a violation would not constitute an offense warranting a dismissal. We also note that the troubling external personal circumstances largely precipitating the previous two cases on this Board had not resolved themselves at the time this claim arose. In Claimant's favor, moreover, there is evidence that Claimant did, in fact, avail himself of the Carrier's EAP program, although later than one might have wished. In view of the unique circumstances of this case, and *without precedent* for future similar cases, the Board finds that Claimant's dismissal shall be reduced to a one-year actual suspension, and he shall be returned to work, with back pay for the remaining time out of work, and with all other rights and privileges intact. The moneys owed shall be determined jointly by the Carrier and the Organization, in the manner customary between the Parties.

AWARD

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

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Marcus Duff*  
Organization Member

*John D. Gold*  
Carrier Member

Dated April 17, 2018

...to develop the facts and to determine your responsibility, if any, in connection with an incident that occurred at approximately 1118 hours, November 23, 2016 at or near MP 511 on the Omaha Subdivision, with allegedly running through switch resulting in the derailment of IC2706 while working assignment L57291-23, on duty at 1000 hours, November 23, 2016, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

The formal investigation was held on January 11, 2017. Following the investigation, on January 25, 2017, the Carrier notified Claimant that he had been found guilty as charged and was assessed the penalty of dismissal from Carrier's service as of that date. The Organization filed a claim on Mr. Ford's behalf on February 10, 2017. The Carrier denied the claim in a letter dated April 7, 2017. The matter was then progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute. It is properly before the Board for resolution.

The Carrier maintains that there is ample proof of Claimant's guilt, both from testimonial evidence and from the documents presented by the Carrier during the formal investigation. It points out that the download from the engine confirms that Claimant failed to stop short of the switch at issue since it was lined against him. It asserts that Claimant's defense on the record that he was unfamiliar with the territory does not constitute exculpatory testimony but suggests rather that he should have been even more cautious than usual in moving his train. The Carrier also insists that in light of Claimant's prior discipline record the penalty assessed was warranted and not excessive or arbitrary.

The Organization protests that the Conductor in this case was ultimately not charged with a violation, notwithstanding the NOI, and therefore suggests that the Carrier pre-judged the Claimant before the formal investigation began. It also points out that Claimant was truthful at the investigation and offered reasonable explanations of how the derailment occurred. In



addition, the Organization notes that the amount of damage was merely \$480 and was not sufficient to justify Claimant's dismissal.

The Board has reviewed the transcript of the investigation and the documentary evidence attendant thereto with care. There is no evidence on this record to suggest that the Carrier pre-judged Claimant prior to the actual formal investigation. The Board agrees with the Carrier that unfamiliarity with the territory cannot be viewed as an exculpatory explanation of the incident at issue. Moreover, given Claimant's prior discipline for safety infractions, we do not find the ultimate penalty of dismissal to be excessive in this case.

AWARD

Claim denied.

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Marcus J. Ruff*  
Organization Member

*John W. Dwyer*  
Carrier Member

Dated 23 MAY 2018