

AWARD NO. 21

Case No. 21

Organization File No.

Carrier File No. IC-BLET-2008-00039

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer A. B. Nicholson for the reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on June 4, 2008 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for allegedly violating Canadian National U.S. Operating Rules General Rule A and C, 520, 701 and Operating Bulletin Number 36 in connection with alleged damages sustained to Locomotive IC 1202 and Railcar SIRX 95019 and fouling the Trim 1 and Trim 2 Crossover, resulting in a sideswipe, at approximately 0745 hours, Monday, May 12, 2008 while working as Engineer on R90971-12.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On May 12, 2008 Claimant was working assignment R90971-12 at Johnston Yard in Memphis, Tennessee. During his tour of duty, Claimant was making a light engine move out of a track in C-Yard. He was instructed to allow another assignment to clear the crossover switch before

going to the other side of the yard. Claimant, however, pulled up too close to the crossover and fouled it, sideswiping the trailing end of the last car of the other movement as it was going through the crossover. Student Brakeman Manis had been riding the stirrup of the rear car and was able to move around to the end ladder before the impact. As a result of this incident, Claimant was directed to attend a formal investigation in connection with damage sustained by the railcar and the locomotive. Following the investigation, Claimant was dismissed from service.


Upon our review of the record of the investigation, we conclude that there was substantial evidence to support the Carrier's charge against Claimant. When asked if he attempted to stop his engine consist, Claimant replied, "Yes. I was attempting to stop. I guess evidence of the accident that occurred, I guess I - I overestimated the clearance point of the crossover, yes, sir, but I was attempting to stop." [Tr. 21]. Absent any evidence of mechanical failure, the Board must accept the Carrier's conclusion that the collision was caused by Claimant's failure to stop the engine prior to fouling the crossover switch.

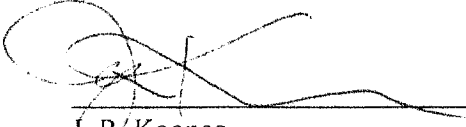
While the damage to the engine and railcar might not seem significant, it is obvious that had Student Brakeman Manis not acted quickly he might have been crushed between the engine and car. This was a very serious failure on Claimant's part. Claimant's record shows several disciplinary entries for operating rules violations since his promotion to engineer, including improper train handling, derailments and failing to stop for a red signal and backing up without permission. For these incidents, Claimant has received as much as a 45 day suspension. We conclude that the Carrier has properly utilized progressive discipline, but without success. Although the Organization has cited the Carrier's issuance of a reprimand and a 15 day deferred suspension in August and Septem-

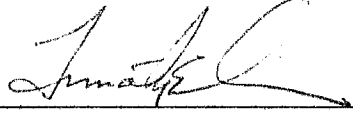
ber 2007, we note that those actions were taken for attendance related issues and not for his operation of an engine. We do not agree that these disciplinary actions, therefore, indicated that the Carrier was starting at the beginning in its use of progressive discipline. We find, therefore, that Claimant's dismissal was supported by both the seriousness of his offense and his prior disciplinary record.

We also do not agree with the Organization's argument that Claimant was denied due process because his conductor was not charged in connection with this incident. The decision to charge Claimant and not the conductor was based upon preliminary interviews with the two employees. We cannot find that Claimant was prejudiced in any manner by the Carrier's decision not to charge the conductor. It is clear from the record of the investigation, which included the conductor's testimony, that Claimant was solely responsible for this incident. The record shows the conductor twice told Claimant to stop, but he failed to do so. We have considered the Organization's other objections and find them to be without merit.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


J. R. Koonce
Employee Member


Timothy E. Rice
Carrier Member

Dated: December 2, 2009
Arlington Heights, Illinois

AWARD NO. 22
Case No. 22

Organization File No.
Carrier File No. IC-BLET-2008-00119

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
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DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer C. D. Harvey for reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on November 11, 2008 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for allegedly violating Canadian National U.S. Operating Rules General Rule A and H, 100, 104 and CN LIFE U.S. Safety Rule(s) T-2 and Section 2, CORE Safety Rule, page 1, Rights and Responsibilities, No. 1 in connection with whether or not he failed to center the reverser on locomotive, IC 1021, when Utility Brakeman D. M. Elliott allegedly went in-between equipment, while attached to crew after he had allegedly stated "set and centered IC 1021" via the radio in Fulton Yard, MP 269.5 on the Fulton Subdivision at approximately 1420 hours on Wednesday, October 15, 2008 while working as Engineer on assignment A 43171-15.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

The facts in this case are not in dispute. Claimant was working as engineer on train A 43171-15 on October 15, 2008. When the train arrived at Fulton Yard, Utility Brakeman Elliott came to work with the crew to assist in picking up twelve cars. After Claimant stopped the train, Elliott radioed that he was going between the cars to tie handbrakes, as required by Carrier rules. Claimant responded "set and centered." This meant that the independent brake was set and the reverser lever was in the center, or neutral, position. Trainmaster Steinbeck, who had been riding the train, noticed that the reverser lever was in the forward position.

As a result of this incident, Claimant was directed to attend a formal investigation at which he was charged with failing to center the reverser. At the investigation, Claimant acknowledged that he had failed to center the reverser and asserted it was not a common practice for him not to center the reverser. Following the investigation, Claimant was dismissed from service.


Inasmuch as Claimant acknowledged that he told Utility Brakeman Elliott that the reverser was centered when it had not been, we must find that there is substantial evidence to support the Carrier's charge against Claimant. The only question before the Board is whether the discipline was excessive. Claimant's violation of the rule was a serious one. It put another employee in jeopardy because Claimant failed to afford him the full level of protection he expected when he went between the cars.

Claimant's record indicates that he had received two letters of caution and two suspensions for attendance related offenses. Additionally, he had received a five day deferred suspension for failing to inspect a passing train, a fifteen day suspension for running through a switch and a forty-five day suspension for failing to have on personal protective equipment. While this record is less


than ideal, we are satisfied that the time he has spent out of service is sufficient to impress upon him the need to work safely and comply with the Carrier's rules and regulations. Accordingly, we will direct that Claimant be reinstated to service with seniority rights unimpaired, but without compensation for time lost. Claimant is to understand that this is a last chance for him to demonstrate that he can work safely. His failure to do so will most assuredly result in his permanent dismissal.

In reaching this conclusion, we have considered the various objections raised by the Organization and find them to be without merit.


AWARD: Claim sustained in accordance with the above Findings.



Barry E. Simon
Chairman and Neutral Member



J. R. Koonce
Employee Member



Timothy E. Rice
Carrier Member

Dated: December 2, 2009
Arlington Heights, Illinois

AWARD NO. 23
Case No. 23

Organization File No.
Carrier File No. IC-BLET-2009-00066

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
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DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Bruce Z. Dearden for reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on March 18, 2009 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for allegedly violating Canadian National/Illinois Central Air Brake & Train Handling Rules 300, 303, 304 and 308 in connection with an alleged train separation around Osyka, MS at approximately 1815 hours on February 4, 2009 while working as Engineer on train M32071-04.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On February 4, 2009 Claimant was assigned as Engineer on Assignment M32071-04 originating at Jackson, Mississippi and operating southward to Orleans Junction on the McComb Subdivision. At Osyka, Mississippi, Claimant's train was to meet an empty grain train. As Claimant

came through a curve at North Osyka, he observed that he had an approach signal. As he passed the signal, his train was going 53 miles per hour. Approximately 3000 feet later, Claimant made a seven pound brake reduction. When he saw that the signal at South Osyka was not clearing, Claimant made an emergency brake application, causing the train to separate.

Claimant and his conductor were subsequently directed to attend a formal investigation concerning the handling of the train. Following the investigation, Claimant was dismissed from service effective March 18, 2009.

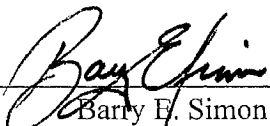
Our review of the record of the investigation establishes that there was substantial evidence to support the Carrier's charge against Claimant. Although Claimant disputes the Carrier's contention that he expected the signal to clear, we find that to be irrelevant. When a train receives an approach signal, the engineer's expectation should be that the next signal would be red. That means he should have been prepared to stop in advance of the signal. Obviously, he was not. While we do not agree with the Organization that the recorder downloads should be disregarded because of discrepancies in the identification of the locomotives, we note that the fact that Claimant had to make an emergency brake application to stop his train was sufficient evidence that he did not have the train under control.

The charge against Claimant having been proven, we then must determine whether the discipline imposed was appropriate. Claimant was first hired by the Carrier on June 13, 2004. Thus, at the time of this incident he had slightly more than four and one-half years of service. Four months after he began work, he was issued a Letter of Caution in connection with a train handling violation. He received a Letter of Reprimand on March 9, 2006 for failing to report the fuel reading on his

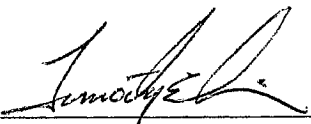
engine consist. On September 1, 2006 he was issued a ten day deferred suspension for running through a switch. He received a thirty day deferred suspension on March 12, 2007 for derailling a locomotive. Finally, he was dismissed on November 15, 2007 for insubordinate, quarrelsome and intimidating conduct toward a trainmaster. This Board, in Award No. 9, reinstated Claimant without pay for time lost and he returned to work on August 11, 2008.

In light of Claimant's disciplinary record during his relatively short tenure with the Carrier, we cannot find that the discipline imposed in this case was excessive. We hold that the Agreement was not violated. In reaching this conclusion, we have considered the various procedural arguments advanced by the Organization and find them to be without merit.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Dennis Pierce
Employee Member


Timothy E. Rice
Carrier Member

Dated: February 19, 2010
Arlington Heights, Illinois

AWARD NO. 24

Case No. 24

Organization File No.

Carrier File No. IC-BLET-2009-00068

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
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DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer R. W. Baker for removal of a twenty (20) day suspension and payment for same, plus one (1) day attending the investigation held on March 12, 2009 to determine your responsibility, if any, in whether or not you missed a call for G87971-22, empty grain train, listed at 0930 hours on February 22, 2009.

FINDINGS:

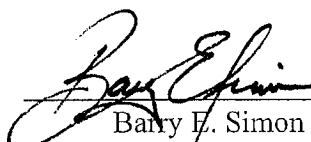
The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

After taking personal leave days on February 20 and 21, 2009, Claimant was marked up on the Engineers' Extra Board at 0001 on February 22. Beginning at 0926 on that date, the crew caller made six attempts to call Claimant for an 1130 assignment. None of the calls was answered and the crew caller then went on to the next name on the list. After the sixth attempt, Claimant called the crew caller to lay off due to sickness. The caller informed him that he would be marked off on call.

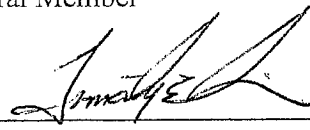
Claimant was subsequently directed to attend a formal investigation at which he was charged with missing a call. He acknowledged that he had been called six times and was not available. He explained that he had gotten dizzy and was vomiting when the caller had attempted to call him. During the investigation, Claimant submitted a doctor's note dated March 10 stating, "Please excuse from work for 2/22/09." Following the investigation, Claimant was assessed a twenty day suspension.

Based upon our review of the record of the investigation, we find that there is substantial evidence to support the Carrier's charge against Claimant. It is evident that Claimant had been off for two days for personal leave prior to February 22. On February 23, he began a one week vacation. Although he testified that he was suffering from vertigo on February 22, he acknowledged that he was not in town the following day. There is no evidence that he informed the crew caller that he was suffering from vertigo, and the doctor's note Claimant provided did not indicate why he was unable to work. Under the circumstances, we find no reason to modify the discipline imposed in this case.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Dennis Pierce
Employee Member


Timothy E. Rice
Carrier Member

Dated: February 19, 2010
Arlington Heights, Illinois

INTERIM AWARD NO. 25
Case No. 25

Organization File No.
Carrier File No. IC-BLET-2009-00073

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

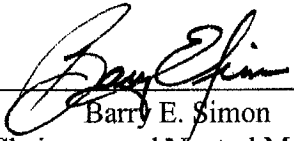
Claim of CN/IC Engineer L. A. Adams for reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on March 31, 2009 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for allegedly violating CN/IC U.S. Operating Department Rule 520 in connection with alleged damage to the South Lead/Scale Track switch on February 19, 2009 at approximately 2330 hours while working as Engineer on R95371-19.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Upon a review of the record, the Board directs that Claimant be reinstated to service. A decision with regard to the Organization's claim for lost earnings will be addressed in the full Award when it is issued.

INTERIM AWARD: Claim sustained in accordance with the above Findings.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member

Timothy E. Rice
Carrier Member

Dated: December 16, 2009
Arlington Heights, Illinois

AWARD NO. 25
Case No. 25

Organization File No.
Carrier File No. IC-BLET-2009-00073

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
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DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer L. A. Adams for reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on March 31, 2009 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for allegedly violating CN/IC U.S. Operating Department Rule 520 in connection with alleged damage to the South Lead/Scale Track switch on February 19, 2009 at approximately 2330 hours while working as Engineer on R95371-19.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

The essential facts in this case are undisputed. While Claimant was assigned as Engineer on Train R95371-19 at Jackson, Mississippi, he was coming out of No. 10 rail and observed that the switch points were not aligned for his movement. Claimant placed the train in emergency, but was

not able to stop before getting into the switch. Although the train did not go through the switch, the bridle arm was bent as a result of this incident.


Claimant and his crew were consequently directed to attend a formal investigation at which they were charged with damaging the switch. Following the investigation, Claimant was dismissed from service. While Claimant did not deny operating into the switch, he explained that he was operating with the locomotive's long nose forward and was on the east side of the track while the switch target was on the west side. Furthermore, Claimant asserted that the switch target was backwards, erroneously indicating that the switch was lined for his movement.

We must agree with the Carrier that Claimant must bear the responsibility for damaging the switch. The Carrier's rules require the engineer to look for switches that are not properly lined. The expectation is that he will note whether or not the switch points are in alignment. A switch target is not always a true indicator of the position of the switch, particularly in this case where other employees, including Claimant's conductor, apparently knew that this target was wrong. We conclude, therefore, that the charge against Claimant was proven.

There are several factors, however, that lead us to the conclusion that the discipline assessed in this case was excessive. First, we note that Claimant had over eight years of service at the time of this incident. While his record indicates several disciplinary entries, it had been two years since his last violation of any rule dealing with the operation and handling of engines. Secondly, we consider the fact that the switch was difficult for him to see because of the positioning of the locomotive to be a mitigating factor. Once he saw that the switch was not properly lined, he took the appropriate action to stop the train.

Accordingly, we will direct that Claimant be reinstated to service with seniority rights unimpaired, but without compensation for time lost. Claimant is to understand that this is a last chance for him to demonstrate that he is capable of complying with the Carrier's rules and regulations. Any future violations may certainly warrant his permanent dismissal.

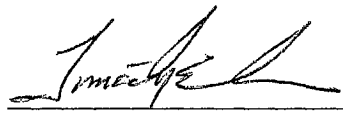
AWARD: Claim sustained in accordance with the above Findings.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: February 19, 2010
Arlington Heights, Illinois

AWARD NO. 26
Case No. 26

Organization File No.
Carrier File No. IC-BLET-2009-00006

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer J. T. Llewellyn for removal of a twenty (20) day suspension and payment for one (1) day attending the investigation held on October 28, 2008 to determine your responsibility, if any, in whether or not you were absent without authority on November 10, 2008.

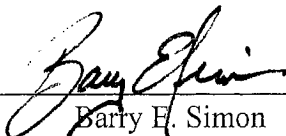
FINDINGS:

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

The essential facts in this case are not in dispute. Claimant, an extra board Engineer, marked off sick at 0038 on October 4, 2008. Carrier rules required him to either mark up or extend his layoff within 24 hours. Claimant did neither. Consequently, he was directed to attend a formal investigation at which he was charged with being absent without authority. Following the investigation, Claimant was assessed a twenty day suspension.

Although Claimant testified that he attempted to call the crew caller, he said he hung up when his call went to voice mail. He did not leave a message or attempt to contact anyone else. He acknowledged that he did not have permission to be absent on October 5, 2008. We find, therefore, that the charge against Claimant was proven. A review of Claimant's record shows several disciplinary entries for attendance related offenses. Under the circumstances, we find no basis to modify the discipline imposed by the Carrier.


AWARD: Claim denied.



Barry H. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: February 19, 2010
Arlington Heights, Illinois

AWARD NO. 27
Case No. 27

Organization File No.
Carrier File No. IC-BLET-2009-00028

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
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DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer C. J. Nerich for removal of a 30-day suspension for the alleged violation of Canadian National/Illinois Central U.S. Operating Department Rules 1102, General Rule C, Rule 100, Rule 104 and Rule 106 in connection with allegedly operating his train into or through a planned work without proper authority at approximately 1100 hours on Friday, September 19, 2008 while working as Engineer on train G835-91-19 with all notations of discipline expunged from his personal work record and compensation for all time lost beginning with the date he was removed from service at the end of his tour of duty on September 19th – with his suspension beginning October 20th through November 26th, 2008, so the actual lost time would be September 20 - November 26, 2008 – totaling 68 days.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

The underlying facts in this case are not in dispute. Claimant, while working as Engineer on Assignment G835-91-19 on September 19, 2008, entered the work limits that were under the control of Welder Pennington with permission. After passing through the work limits, the crew then came

back through the work limits, but had not received permission to do so. Claimant was subsequently removed from service and was issued the following notice:

Arrange to attend a formal investigation to be held at 1100 hours, Friday, September 26, 2008, at the Decatur Club, 158 West Prairie Street, Decatur, IL 62526 to develop the facts and determine your responsibility, if any, in connection with whether or not you operated your train into or through a planned work without proper authority at approximately 1100 hours, on Friday, September 19, 2008, while you were working as crew members on assignment G835-91-19 and A431-71-18 at or around Mattoon, IL.

This investigation will serve as the Certification hearing in accordance with the Code of Federal Regulations (49 CFR 240.307)

You may arrange to have a representative and/or witnesses as provided in your respective schedule agreements.

Your personal work record may be reviewed at this investigation.

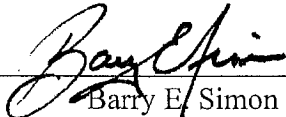
The investigation was originally scheduled for September 26, 2008, but at the request of Claimant's representative was postponed three times until November 14, 2008. The hearing began at 9:28 am and concluded at 4:18 pm, and resulted in a 265 page transcript, exclusive of exhibits. Following this investigation, Claimant was assessed a thirty day suspension. Additionally, Claimant's Engineer Certification was suspended for thirty days, which was upheld by the Locomotive Engineer Review Board.

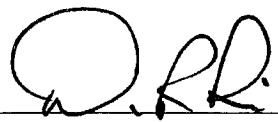
The Organization protests the discipline on the basis that Claimant was not notified that the investigation would also serve as a disciplinary investigation. It notes that the Federal Regulations permit the Carrier to combine a certification hearing with a disciplinary hearing, but insists the Carrier did not do so in this case. It refers the Board to numerous investigation notices where the Carrier had stated that the investigation would *also* serve as the certification hearing. By not including the word "also" in Claimant's investigation notice, the Organization argues the Carrier

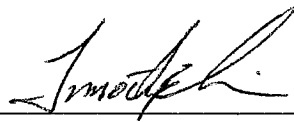
intended the hearing only to be a certification hearing. We reject the Organization's argument. The record reflects that Claimant's representative obviously knew that this was going to be a disciplinary hearing as well as a certification hearing. He made several requests for information in advance of the hearing, and supported his demand by citing the Railway Labor Act and Article 29 of the Agreement. If this were solely a certification hearing, neither the Railway Labor Act nor Article 29 of the Agreement would have been applicable.

Based upon our review of the record, we conclude that there was substantial evidence to support the Carrier's charge against Claimant. The assessment of a thirty day suspension, which ran concurrent with the suspension of Claimant's certification, was not unreasonable. Claimant, however, was withheld from service for a total of 68 days. The Organization argues that he should be compensated for any lost time in excess of thirty days. The Carrier has responded that the length of time Claimant was withheld from service was attributable to the postponements requested by his representative. While that may be true, when the Carrier withholds an employee from service it does so at its peril. It is free to restore the employee to service any time it wishes to do so. If this Board were to overturn the discipline in its entirety, the Carrier would be liable for all lost time, including the period the employee is withheld from service pending the investigation. In this case, the Carrier decided that Claimant should be suspended for only thirty days. Any time he lost in excess thereof should be considered as unwarranted additional discipline. Accordingly, we will uphold Claimant's thirty day suspension, but we will direct the Carrier to compensate him for any lost time after the thirtieth day.

AWARD: Claim sustained in accordance with the above Findings. Carrier is directed to comply with this Award within thirty days.


Barry E. Simon
Chairman and Neutral Member


Dennis Pierce
Employee Member *Dissent to follow*


Timothy E. Rice
Carrier Member

Dated: February 19, 2010
Arlington Heights, Illinois

AWARD NO. 28

Case No. 28

Organization File No.

Carrier File No. IC-BLET-2009-00036

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
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DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer C. E. Hodges for the removal of the (30) day suspension for the alleged violation of Canadian National/Illinois Central U. S. Operating Department Rule 1101 in connection with allegedly passing a red flag at Mile Post 886 on the McComb Subdivision without stopping while working as Engineer on M31971-20 at approximately 1530 on November 20, 2008 with all notations of discipline expunged from his personal work record and compensation for all time lost, including loss of earnings due to attending the investigation.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On November 20, 2008 Claimant was working as Engineer on Train M31971-20 on the McComb Subdivision. On that date, Track Foreman Miller had obtained Planned Work protection between mileposts 886 and 879 from 7:00 am to 2:30 pm. Because of train traffic, the Rail Traffic Center directed Miller to keep up the yellow over red board and the red board after the expiration

of his Planned Work. At approximately 3:30 pm, Claimant's train passed milepost 886 without stopping.

Claimant and his conductor were consequently directed to attend a formal investigation at which they were charged with passing a red flag. Following the investigation, the Carrier determined that Claimant had violated Operating Rule 1101 and he was assessed a thirty day suspension.

The record of the investigation shows that Track Foreman Miller testified that the yellow over red and red boards had not been removed and were still posted. Claimant and his conductor both testified that they did not see the boards, although the conductor stated he saw the back of a red board at milepost 879. Furthermore, the Organization argues the train crew did not expect the flags to be displayed because it was outside the hours of the Planned Work. Operating Rule 1101, notes the Organization, states that red boards, when used with Planned Work, must be displayed "only during the hours Planned Work is in effect."


The Board understands the Organization's position with respect to the boards being displayed after the expiration of the Planned Work. It is evident Rule 1101 required Foreman Miller to remove the boards. Assuming, arguendo, that they were still up when the train went past milepost 886, does that mean they can be ignored? Obviously not. Upon seeing the boards, the train crew is required to take the appropriate action whether the boards should be there or not.

As to whether or not the boards were actually up, that is a question of fact that is left to the Hearing Officer. As has been noted by numerous Boards in this industry, determinations as to the credibility of witnesses are made by the Hearing Officers and we will overturn such determinations only upon our finding that they were unreasonably made. In this case, we can make no such finding.

Accordingly, we will defer to the Hearing Officer's finding of fact. That being said, we find that there was substantial evidence in the record to support the Carrier's charge against Claimant. In reaching this conclusion, we have considered the Organization's various procedural objections and find them to be without merit.

Although Claimant has a long record of service with the Carrier (over 34 years at the time of this incident), and few disciplinary entries (only one in the past ten years), we find that the discipline imposed in this case was appropriate. Failing to stop for red signals or flags is a serious offense that could result in casualties and/or damage to property. In consideration of Claimant's record, though, we will direct the Carrier to remove the disciplinary entry from his record if there are no further disciplinary actions before six months following the date of this Award. There shall be no payment of lost wages as the result of such action.


AWARD: Claim sustained in accordance with the above Findings.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: *February 19, 2010*
Arlington Heights, Illinois

AWARD NO. 29
Case No. 29

Organization File No.
Carrier File No. IC-BLET-2009-00044

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer B. Cunningham for reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on January 28, 2009 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for the alleged violation of Canadian National/Illinois Central General Code of Operating Rule I in connection with his alleged absenteeism during the period of December 10 through 30, 2008 with notations of discipline expunged from his personal work record and compensation for all time lost, including loss of earnings due to attending the investigation.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Claimant was first employed by the Carrier on September 18, 2006 as a locomotive engineer in Memphis, Tennessee. During the period from December 10 through December 30, 2008, Claimant did not perform any service for the Carrier. Consequently, he was directed to attend a

formal investigation at which he was charged with excessive absenteeism. Following the investigation, Claimant was dismissed from service.

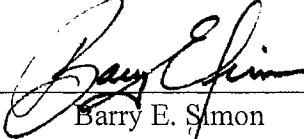
A review of the record of the investigation shows that Claimant acknowledged that he did not work during the 21 day period and had laid off for fourteen of those days. He further acknowledged that he had not requested a leave of absence during that period. Of the dates he was marked up during that time, it is evident that at least three of the days were his rest days. Claimant provided notes indicating his absences were caused by the illness of his son or his daughter.

Rule I provides, in part, that "Employees are required to work regularly and without excessive layoffs or absences." Marking off for fourteen days in a three week period is certainly excessive. The fact that he may have had legitimate reasons for his absences does not mean that they were not excessive. Regardless of the basis for an absence, the Carrier has a right to expect its employees to be available for work on a regular basis. Although Claimant had used FMLA leave on previous occasions, he did not during this time period. Consequently, he was subject to discipline for his absenteeism. We find that the charge against Claimant was proven.

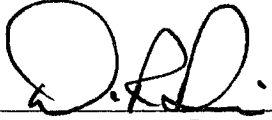
Claimant had been counseled and disciplined on prior occasions in regard to his attendance. Apparently, though, he had gone for approximately thirteen months without an attendance problem prior to this incident. With that in mind, we do not believe that Claimant is incapable of learning from this experience. Accordingly, we will direct that Claimant be reinstated to service with seniority rights unimpaired, but without compensation for time lost. Claimant is to understand that this is a last chance to demonstrate that he can comply with the Carrier's attendance requirements. If he cannot, any further problems of this nature will likely result in his permanent dismissal.



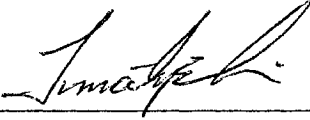
AWARD: Claim sustained in accordance with the above Findings.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member *Dissent to follow*



Timothy E. Rice
Carrier Member

Dated: *February 19, 2010*
Arlington Heights, Illinois

AWARD NO. 30
Case No. 30

Organization File No.
Carrier File No. IC-BLET-2008-00144

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer W. Mason for removal of a five (5) day deferred suspension and payment for one (1) day attending the investigation held on October 30, 2008 to determine your responsibility, if any, in whether or not you were excessively absent for the period from September 18, 2008 through October 12, 2008.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.


During the period from September 15 through October 12, 2008, Claimant was assigned as Engineer on Job RJY-13 at Memphis, Tennessee. In that one month period, Claimant marked off sick on seven days. He was consequently directed to attend a formal investigation at which he was charged with excessive absenteeism. Following the investigation, he was assessed a five day deferred suspension.

Claimant does not dispute that he was absent as indicated in the charge. The record further indicated that his absence on September 15 was the one day between his vacation and his scheduled rest day. His absences on September 20 and 21 were a Saturday and Sunday, and his absences on October 4, 5 and 6 were the Saturday, Sunday and Monday before his Tuesday rest day.

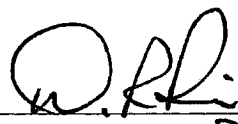
We agree with the Carrier's determination that Claimant's absences during this period were excessive. We are not persuaded by the fact that Claimant produced a doctor's note for some of his absences. First, we note that the doctor did not indicate why Claimant could not perform the duties of his assignment, except to say that he was "under my care." We further note that the certifications from the doctor were neither signed nor dated. Even if Claimant had been too ill to work, the Carrier has the right to expect regular attendance from its employees. Rule I, in pertinent part, states, "Employees are required to work regularly without excessive layoffs or absences." Under the circumstances, we find that the discipline imposed was neither arbitrary nor unreasonable.

We must caution the Carrier, however, on its use of averages to determine whether an employee's absences are excessive. When asked to define "excessive," Assistant Superintendent Jury explained it would be any amount more than the average. By his definition, if there were nine engineers who were absent for one day each, and a tenth engineer had perfect attendance, all but the tenth would be guilty of excessive absenteeism because the average was only 0.9 days. The absurdity of such a definition should be obvious. In Award No. 14 we discussed the use of "shop averages" at length, and we reinforce here what we said in that case. In Claimant's instance, though, his absenteeism was excessive without the need to compare it to other employees, and we will uphold the discipline, as we did in Award No. 18.

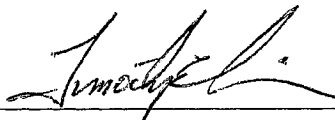
AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member *Dissent to follow*



Timothy E. Rice
Carrier Member

Dated: *February 19, 2010*
Arlington Heights, Illinois

AWARD NO. 31

Case No. 31

Organization File No.

Carrier File No. IC-BLET-2009-00037

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer D. G. Williams, Jr. For reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on December 26, 2008 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for allegedly violating CN/IC U. S. Operating Department Rule T in connection with allegedly sleeping while working as Locomotive Engineer on train C73891-24 at approximately 2020 hours on November 25, 2008 in Independence, LA.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

While operating Train C73891-24 on November 25, 2008, Claimant experienced a train separation at approximately 6:42 pm as the result of defective equipment. Superintendent Owens phoned Special Agent Fletcher and asked him to go to the train, which was at Independence, Louisiana, and offer assistance. When Fletcher arrived, track and mechanical department employees

informed him they were trying to contact Claimant by radio but could not reach him. Fletcher then went to the locomotive to check on Claimant. When he entered the locomotive, Fletcher observed Claimant in a reclining position with his feet up and his eyes shut. According to Fletcher, he called out to Claimant but got no response. He grabbed Claimant's arm and again called out to him, but still got no response. It was only when Fletcher shook his arm that Claimant awoke.

Claimant was subsequently directed to attend a formal investigation at which he was charged with sleeping on duty. Following the investigation, at which he denied he was sleeping, Claimant was dismissed from service. General Rule T – Sleeping states, “Employees must not sleep while on duty. Employees slouched or reclined with their eyes closed or concealed will be in violation of this rule.”

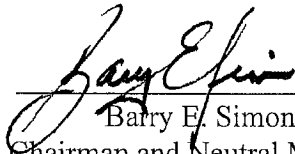
At the investigation, testimony was offered by the Track Inspector who had been at the scene and had attempted to contact Claimant by radio. Additionally, Claimant's conductor testified that there was static on the engine radio, but that it was working and he had spoken to Claimant on it.

Obviously, Claimant's denial that he was sleeping conflicts with Fletcher's testimony that he was. As we noted in Award No. 19, also involving Claimant, it is not the role of this Board to weigh the credibility of the witnesses at the investigation. That role is reserved to the Hearing Officer. This Board will reverse the Hearing Officer's conclusion only if we can find it was unreasonably made. In this case, we can make no such finding. Fletcher's testimony is strengthened by the testimony of the other two employees that the radio on the locomotive was working and that attempts to contact Claimant on that radio were unsuccessful. We find, therefore, that there was

substantial evidence in the record to support the Carrier's charge against Claimant that he was in violation of General Rule T.

Sleeping on duty is a serious offense, particularly when it involves employees in train and engine service. We note that Claimant has had several disciplinary entries in the past few years related to operating rule violations. The Carrier has employed progressive discipline, culminating with Claimant's dismissal in this case. We find nothing in the record that would cause us to modify the discipline imposed by the Carrier. In reaching this conclusion, we have considered the various arguments advanced by the Organization and find them to be without merit.

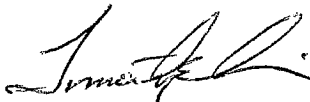
AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: February 19, 2010
Arlington Heights, Illinois

AWARD NO. 32

Case No. 32

Organization File No.

Carrier File No. IC-BLET-2009-00045

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer S. P. Sandlin for removal of a five (5) day suspension and payment thereof, plus one (1) day attending the investigation held on January 7, 2009 to determine your responsibility, if any, in connection with damage caused to GATX 44069 and GATX 46271 on December 08, 2008.

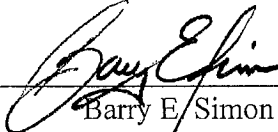
FINDINGS:

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On December 8, 2008 Claimant, an extra board engineer, was working on Assignment RJY23 at Memphis, Tennessee. At approximately 12:30 am on that date, Claimant made a move through the short crossover switch between Trim 1 and the Departure Yard and then reversed. On the reverse move, two cars derailed before Claimant was able to stop the movement. He was subsequently directed to attend a formal investigation in connection with this incident and was assessed a five day suspension.

The Carrier concluded that the derailment was the result of Claimant operating through a switch that was not properly lined for his movement. Claimant contends he checked the switch points before going through the switch, but acknowledges that he had not checked the switch target. Upon our review of the record of the investigation, we find that there was substantial evidence to support the Carrier's charge against Claimant. Under the circumstances, we find no basis to modify the discipline imposed. In reaching this conclusion, we have considered the various arguments advanced by the Organization and find them to be without merit.

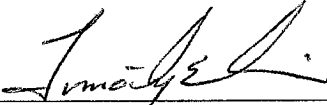
AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: February 19, 2010
Arlington Heights, Illinois

INTERIM AWARD NO. 33
Case No. 33

Organization File No.
Carrier File No. IC-BLET-2009-00047

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

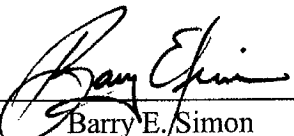
Claim of CN/IC Engineer J. E. Bernard, Jr. for reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on February 2, 2009 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for allegedly violating CN/IC U.S. Operating Department Rules 104 and 832 in connection with allegedly failing to control a locomotive or train in accordance with a signal indication that requires a complete stop before passing at South Sidon, MS resulting in his train allegedly occupying Track Authority without permission from the Employee in Charge at South Sidon, MS at MP 130.9 at approximately 1240 hours on Monday, December 29, 2008 while he was working as an Engineer on Assignment C73971-29.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Upon a review of the record, the Board directs that Claimant be reinstated to service. A decisions with regard to the Organization's claim for lost earnings will be addressed in the full Award when it is issued.

INTERIM AWARD: Claim sustained in accordance with the above Findings.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member

Timothy E. Rice
Carrier Member

Dated: December 16, 2009
Arlington Heights, Illinois

AWARD NO. 33
Case No. 33

Organization File No.
Carrier File No. IC-BLET-2009-00047

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer J. E. Bernard, Jr. for reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on February 2, 2009 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for allegedly violating CN/IC U.S. Operating Department Rules 104 and 832 in connection with allegedly failing to control a locomotive or train in accordance with a signal indication that requires a complete stop before passing at South Sidon, MS resulting in his train allegedly occupying Track Authority without permission from the Employee in Charge at South Sidon, MS at MP 130.9 at approximately 1240 hours on Monday, December 29, 2008 while he was working as an Engineer on Assignment C73971-29.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On December 29, 2008 Claimant was the Engineer on Train C73971-29 traveling northbound on the Yazoo Subdivision mainline. He encountered a diverging approach signal at mile post 132.8.

This signal required him to be prepared to stop at the next signal, which would be at South Sidon, milepost 130.9. Before reaching South Sidon, while coming out of a curve, Claimant saw a maintenance of way truck on the rail at the crossing north of the signal, which was displaying a stop indication. Claimant made an emergency brake application and the train stopped four and one-half car lengths beyond the signal and just short of hitting the truck.


As a result of this incident, Claimant was directed to attend a formal investigation at which he was charged with failing to control his train. Following the investigation, Claimant was dismissed from service. Claimant was first hired by the Carrier as a brakeman on June 1, 2004. This incident occurred two months after his promotion to Locomotive Engineer.

At the investigation, Claimant testified that he stopped the train because he had seen the truck on the rail, rather than because the signal was red. He said he did not recall what the signal aspect was at the time. There is no dispute that the signal was, in fact, red or that he passed the signal before the train came to a stop. In light of the record before us, we must conclude that Claimant failed to observe the signal and properly control his train to enable him to stop before passing the signal.

Although Claimant was a relatively new engineer, his years of train service should have impressed upon him the need to be aware of signal indications. We agree with the Carrier that this is a serious violation that warrants severe discipline. We consider permanent dismissal in this particular case, however, to be excessive. Accordingly, we will direct the Carrier to reinstate Claimant to service with seniority rights unimpaired, but without compensation for time lost. Claimant is to understand that this is a last chance for him to demonstrate that he can work safely

and in compliance with the Carrier's rules and regulations. Any future violations may result in his permanent dismissal.


AWARD: Claim sustained in accordance with the above Findings.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: February 19, 2010
Arlington Heights, Illinois

INTERIM AWARD NO. 34
Case No. 34

Organization File No.
Carrier File No. IC-BLET-2009-00102

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

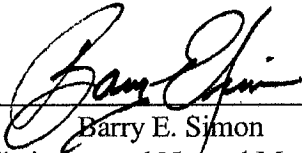
Claim of CN/IC Engineer J. P. Rush for reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on May 1, 2009 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for allegedly violating CN/IC U.S. Operating Department Rules 520, 701, General Rule A and General Rule C in connection with the alleged collision between R 99071-31 and M 30271-31, resulting in alleged derailment and alleged damages to GTW 4925 and GREX 5230 while working as Engineer on R 99071-31 at Yazoo City, MS at approximately 0115 hours on April 1, 2009.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Upon a review of the record, the Board directs that Claimant be reinstated to service. A decision with regard to the Organization's claim for lost earnings will be addressed in the full Award when it is issued.

INTERIM AWARD: Claim sustained in accordance with the above Findings.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member

Timothy E. Rice
Carrier Member

Dated: December 16, 2009
Arlington Heights, Illinois

AWARD NO. 34
Case No. 34

Organization File No.
Carrier File No. IC-BLET-2009-00102

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHEROOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer J. P. Rush for reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on May 1, 2009 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for allegedly violating CN/IC U.S. Operating Department Rules 520, 701, General Rule A and General Rule C in connection with the alleged collision between R 99071-31 and M 30271-31, resulting in alleged derailment and alleged damages to GTW 4925 and GREX 5230 while working as Engineer on R 99071-31 at Yazoo City, MS at approximately 0115 hours on April 1, 2009.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On April 1, 2009 Claimant was working as Engineer on Assignment R990 at Yazoo City, Mississippi, having come on duty at 7:00 pm the previous day. During his tour of duty, Train M302 arrived at Yazoo City and set out cars on the south end of track YC05. It was understood that

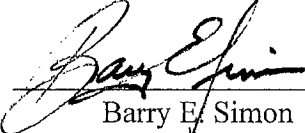
Claimant's engine would stay in the clear during this setout while M302 pulled south to clear the switch. After the setout was made, M302, hanging onto car GREX5230 (an eight-pack), began to pull forward toward the south end switch. Before it cleared the switch, though, Claimant began to move his engine and sideswiped M302, derailing its engine and damaging the eight-pack.

Both crews were consequently directed to attend a formal investigation in connection with the collision. Following the investigation, Claimant was dismissed from service.

The record of the investigation indicates that Claimant's conductor had asked for slack and Claimant began to move his engine forward. It appears that the conductor never told Claimant to stop, so he kept going until he ran into the side of the other train. Whether or not the conductor told him to stop, Claimant should have exercised some reasonable degree of caution. He knew that the other train was working on the adjacent track and that his conductor had only asked him to move far enough for slack. In light of the record before us, we find that there was substantial evidence to support the Carrier's charge against Claimant. In reaching this conclusion, we have considered the various arguments raised by the Organization and find them to be without merit.

We conclude, however, that the discipline imposed was excessive. Accordingly, we will direct that Claimant be reinstated to service with seniority rights unimpaired, but without compensation for time lost. Claimant is to understand that this is a final chance to demonstrate that he can perform his duties in a safe manner and in compliance with the Carrier's rules and regulations. Any future violation may be cause for Claimant's permanent dismissal.

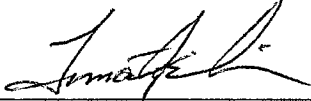
AWARD: Claim sustained in accordance with the above Findings.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: February 19, 2010
Arlington Heights, Illinois

AWARD NO. 35
Case No. 35

Organization File No.
Carrier File No. IC-BLET-2009-00152

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer D. J. Collums for removal of a ten (10) day suspension deferred for one (1) year and payment for one (1) day attending the investigation held on June 22, 2009 to determine your responsibility, if any, in connection with derailment and subsequent damages sustained to railcars UP 78640, GFSX 7112 and UTLX 68941.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

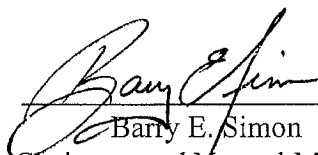
On May 23, 2009 Claimant was the Engineer on Assignment R92871-23. While switching cars on the north end of the yard at President's Island, three cars that he had been shoving over the No. 1 switch derailed at the switch. Claimant was consequently directed to attend a formal investigation in connection with this incident. Following the investigation, Claimant was assessed a ten day deferred suspension.

The investigation revealed that Claimant had been directed by his conductor to kick a car toward Old Main 1. When the car did not clear the No. 1 switch, he came back with his engine and nine cars, coupled onto the car that was fouling the switch, and then kicked the car down. When told to kick the car by his conductor, Claimant moved the throttle from idle directly to the eighth notch.

Testimony was offered by Supervisor of Locomotive Engineers J. E. Regel, who explained that going from idle to the eighth notch in these circumstances would have maximized in-train and track-train forces. He stated he would have first gone to the third notch, then to the fifth, sixth or possibly the eighth notch, but not directly from idle to eight. The Carrier, based upon the record, concluded that Claimant was in violation of Air Brake and Train Handling Rule 300 (iv), which directs the engineer to “select and adjust the throttle, dynamic brake, and air brake in a manner which minimizes in-train and track-train forces.”

Upon review of the record before us, the Board finds that there was substantial evidence to support the Carrier’s charge against Claimant. In reaching this conclusion, we have considered the various arguments advanced by the Organization and find them to be without merit. In particular, we reject the Organization’s argument that there was no proof of substantial damage. The record shows that both rails were turned over and had to be replaced. Even if there had been no damage, the fact that Claimant did not properly handle his train made him subject to discipline. While the Carrier does not offer an explanation, it is likely that the relatively minor damage is reflected in the fact that Claimant received relatively minor discipline. We note that his record includes a dismissal in 2002 for making a shoving move that resulted in a derailment. We do not find any basis for modifying the discipline imposed.

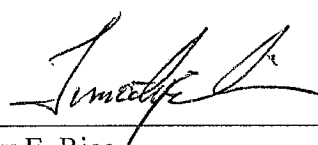
AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: February 19, 2010
Arlington Heights, Illinois

AWARD NO. 36

Case No. 36

Organization File No.

Carrier File No. IC-BLET-2009-00-00168

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer J. Baker, Jr. for the removal of the (60) day suspension consisting of (45) days active and the remaining (15) days deferred for the alleged violation of Canadian National/Illinois Central U.S. Operating Department Rules 600, 701 and 710 in connection with the alleged derailment and damages sustained to TERX 231, SHPX 205019 and ACFX 88901 at approximately 0605 hours Wednesday, July 1, 2009 while he was working as Engineer on Assignment L-50071-01 with all notations of discipline expunged from his personal work record and compensation for all time lost, including loss of earnings due to attending the investigation.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

While he was working as Engineer on Train L50071-01 on July 1, 2009, Claimant's train ran through a switch that was not properly lined for their movement and then went back through the switch. This resulted in the derailment of three cars. Because of the location of the derailment, the Carrier's yard at Memphis was inaccessible for nearly ten hours. Claimant and his conductor were

consequently removed from service and directed to attend a formal investigation at which they were charged with the derailment and damage to equipment. Following the investigation, Claimant was assessed a sixty day suspension, fifteen days of which were deferred for one year.

On the day of the incident, Claimant prepared a written statement about the derailment. It read as follows:

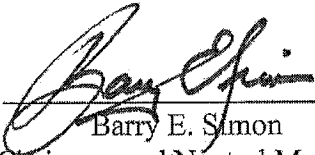
On Wednesday, July 1st at 6:05 AM, I was proceeding southbound through the dogleg. I looked at switch points on inbound lead, but overlooked the receiving lead switch, which caused me to run through the switch. After running through the receiving lead switch, I shoved back four cars to pick up five cars on trim lead. At that time, I derailed three cars in my train. Car # TERX231, SHPX205019, ACFX88901.

This statement was consistent with Claimant's testimony at the investigation. When asked if he admitted any responsibility in regard to this incident, Claimant replied, "With the underlying facts, yeah, I admit I ran through the switch."


In light of Claimant's admission, we find that there was substantial evidence in the record to support the Carrier's charge against him. As for the quantum of discipline imposed, we note that Claimant entered the Carrier's service in 2002 and was accepted into the Student Engineer Program in August 2006. Prior to that, he had received a reprimand for running through a switch in April 2003, a ten day suspension for derailing a locomotive in June 2003, and a ten day suspension for failing to properly inspect a car for connection in August 2004. One month after he began the Student Engineer Program, he received a five day suspension in connection with a derailment. In April 2008 he was issued a thirty day suspension for another derailment. Based upon this record, we conclude that the discipline imposed was consistent with the principle of progressive discipline.

We find no basis for modifying the Carrier's action in this case. In reaching this conclusion, we have considered the various arguments raised by the Organization and find them to be without merit.

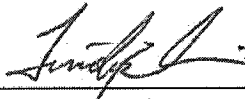
AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: August 25, 2010
Arlington Heights, Illinois

AWARD NO. 37

Case No. 37

Organization File No.

Carrier File No. IC-BLET-2009-00215

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
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DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer R. S. McKnight for the removal of 10 days deferred suspension from his personal work record and compensation for all time lost, plus one day lost wages for attending the investigation, for the alleged violation of CN/IC U.S. Operating Rules – General Rule I in connection with whether or not he missed a call as Engineer for assignment C 73891-30, at approximately 1426 hours, Saturday, May 30, 2009.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

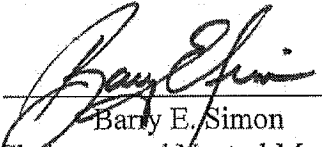
According to the Carrier, Claimant was first out and rested at 1412 on May 30, 2009. It asserts calls were made to both phone numbers he had listed in the crew calling system for service as engineer on Train C73891-30, ordered for 1615. Six attempts to reach him were unsuccessful and he did not respond to the messages that were left for him to contact the crew called. Consequently, he was directed to attend a formal investigation at which he was charged with missing a call.

Claimant explained that he was out in the country at the time he was called and was not aware he did not have a signal on his phone. By the time he returned home he had already missed the call. Following the investigation, Claimant was issued a ten day deferred suspension.


We find, based upon the record before us, that the Carrier had substantial evidence to support its charge against Claimant. We do not find the discipline imposed to be excessive. Employees are responsible for making themselves available for call. If they rely upon a cell phone to receive their calls, they must accept the fact that there are locations where the phone will not work. When they are in such locations, they effectively make themselves unavailable for call.

The Organization has objected to the Carrier's postponement of the investigation. A review of the record of the investigation shows that Claimant's representative asked for an explanation for the postponements. When given an explanation, he replied, "All right. Continue." We take that to be a waiver of any objection.


AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: August 25, 2010
Arlington Heights, Illinois

AWARD NO. 38

Case No. 38

Organization File No.

Carrier File No. IC-BLET-2009-00235

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
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DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer J. K. Foster for the removal of the (30) day suspension for the alleged violation of Canadian National/Illinois Central U.S. Operating Department Rules General Rule A and 412 in connection with allegedly not having his headlight properly displayed on locomotive GTW 6112 in Hollywood Yard at approximately 0645 hours on Wednesday, July 15, 2009 while working as Engineer and performing service on Assignment R 90771-15 (RJY12), with all notations of discipline expunged from his personal record and compensation for all time lost, including loss of earnings due to attending the investigation.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.


On July 15, 2009, Carrier officials were conducting efficiency tests at Hollywood Yard. They noticed that Claimant's engine was moving but did not have the headlight illuminated. They called this to Claimant's attention and the headlight went on. Claimant was subsequently directed to attend a formal investigation in connection with this incident. At the investigation, Claimant acknowledged

that the headlight was off and that the Carrier's rules required it to be illuminated. Following the investigation, Claimant was assessed a thirty day suspension.


Based upon Claimant's acknowledgment that the headlight was off when it should have been illuminated, we conclude that the Carrier had substantial evidence to support its charge against him. Although it is evident that Claimant is a long-term employee with 37 years of service, 35 of which are in engine service, we also note that he has been disciplined and cautioned several times. Many of these actions were early in his career, but he has also been found guilty of operating rule violations in 2005 and 2007, resulting in a five day deferred suspension and a fifteen day suspension, respectively.

While the Carrier may be justifiably concerned that Claimant is becoming careless in his work habits, it is the Board's conclusion that a thirty day suspension was excessive for this offense. Accordingly, we will direct that the suspension be reduced to a twenty day actual suspension and a ten day deferred suspension, with the period of deferral to run for six months from the date the discipline was issued. If Claimant had no further discipline within that time period, the Carrier is directed to pay him for time lost in excess of twenty days. On the other hand, if he had subsequent discipline, it will be considered that he had served the deferred suspension and he is not entitled to any compensation under this Award. In reaching this conclusion, we have considered the various arguments raised by the Organization and find them to be without merit.


AWARD: Claim sustained in accordance with the above Findings. Carrier is directed to comply with this Award within forty-five days.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: August 25, 2010
Arlington Heights, Illinois

AWARD NO. 39
Case No. 39

Organization File No.
Carrier File No. IC-BLET-2009-00267

PUBLIC LAW BOARD NO. 7154

PARTIES) BROtherHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
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TO)
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DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer M. K. Hilbun for the removal of 10 days actual suspension plus one day attending the investigation from his personal record, for the alleged violation of CN Operating Rules A, C, and T in connection with whether or not he was in a reclined position with his eyes closed and/or sleeping while serving as crewmember on R98071-29.

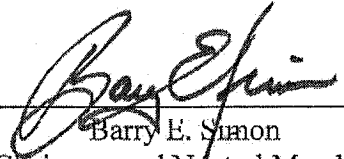
FINDINGS:

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.


The facts in this case are undisputed. On July 30, 2009, when Claimant and his crew could not be contacted by radio, Trainmaster Poole boarded Claimant's locomotive and observed him in a reclined position with his eyes closed. When he was directed to attend a formal investigation in connection with this incident, Claimant testified, "I had my eyes closed. I was leaned back in a reclined position with my eyes closed." Accordingly, he was assessed a ten day suspension.

Under the Carrier's rules, Claimant met the definition of sleeping on duty. We conclude, therefore, that the Carrier had substantial evidence to support its charge against him. Under the circumstances, we do not find the discipline imposed to be excessive. In reaching this conclusion, we have considered the various arguments raised by the Organization and find them to be without merit.

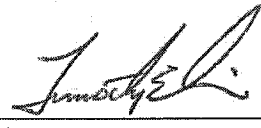
AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: August 25, 2010
Arlington Heights, Illinois

AWARD NO. 40
Case No. 40

Organization File No.
Carrier File No. IC-BLET-2009-00282

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer K. K. Howry for the removal of 10 days deferred suspension from his personal work record and compensation for all time lost, plus one day lost wages for attending the investigation, for the alleged violation of CN/IC U.S. Operating Rules – General Rules H & I in connection with an incident that occurred at approximately 1215 hours on June 19, 2009 at the Decatur Grand Yard office involving moving/handling a Beverage Vending Machine, and which is alleged to have resulted in an injury.

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 dated October 15, 2007, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

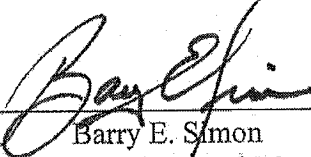
The facts in this case are not in dispute. Because of the sale of the Carrier's Decatur Runaround Yard, a beverage vending machine in the yard office had to be removed. This machine was the property of the Illinois Central Service Club, which is not affiliated with or sponsored by the Carrier, and it was decided that the machine would be placed in the Grand Avenue Yard Office.

During his tour of duty on June 19, 2009, Claimant and his conductor and brakeman took it upon themselves to load the machine onto the brakeman's flatbed trailer and drive it to the Grand Avenue Yard Office. This was done without the knowledge or approval of the Carrier. During the move, Claimant sustained a personal injury when the machine fell on his leg as they were moving it into the yard office. Claimant had to be taken to the hospital for medical attention.


Claimant and his crew were directed to attend a formal investigation at which they were charged with this incident. The investigation ran almost eight hours and resulted in a 178 page transcript. Following the investigation, Claimant was assessed a ten day deferred suspension.

Based upon the record of the investigation, the Board concludes that there was substantial evidence to support the Carrier's charge against Claimant. Although the Organization argues that the Carrier has failed to prove that Claimant did not work in an unsafe manner, it is apparent that this investigation was not about his injury. Rather, Claimant was disciplined for performing work on behalf of another party during his tour of duty without authorization. Although the crew stated they started to perform this work during their lunch break, it would have been impossible for them to complete the move within twenty minutes. Because the Organization does not challenge this aspect of the discipline, we find that the Carrier's action was warranted. The assessment of a ten day deferred suspension was neither arbitrary nor unreasonable. In reaching this conclusion, we have given consideration to the various arguments made by the Organization and find them to be without merit.


AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: August 25, 2010
Arlington Heights, Illinois