

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Versus

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Greg Irwin

Case #241

Award #241

CARRIER FILE: IC-BLET-2017-00115 (Reprimand)

STATEMENT OF CLAIM: Claim of CN/IC Engineer Greg Irwin for the unwarranted discipline of letter of reprimand assessed to Engineer Irwin. This claim is for removal of all notations from his personal work record of discipline assessed from Claimant's work record, and an additional day's pay for attending the hearing for alleged violation of System Bulletin Notice #3, Dated January 1, 2017.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 8-29-17, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's System Bulletin Notice #3, dated January 1, 2017, to which the Organization and Claimant hereby appeal.

CN System Bulletin Notice #3 states, in pertinent part:

"SYSTEM BULLETIN NOTICE NO. 3...

An unexcused absence is defined as any absence other than (1) approved absence(s) for family or medical leave pursuant to the FMLA or similar state leave laws, (2) approved medical leaves of absence, and (3) any other absence or leave as long as proper approval has been granted.

An employee will be subject to corrective action (which may include discipline) if unexcused absences reach any of the following levels during any 12-week period:

-More than 2 occurrences of any duration

-More than 3 total work days missed

-More than 1 occurrence that is on a holiday or immediately before or after a holiday, rest day, Personal Leave Day (PLD), vacation day, or Family Medical Leave Act (FMLA) day

Also, if an employee 1) misses a call for an assignment, 2) refuses an assignment, 3) marks off on call, 4) fails to be available for an assignment and fails to notify the Company of the absence, or 5) leaves a work assignment early without proper permission, the employee will be separately subject to disciplinary consequences after a single occurrence..."

CARRIER POSITION: The Claimant, while serving the Carrier as Engineer; marked off ill on 7-13-17 and again on 8-17-17. Both of these mark offs occurred the day preceding the Claimant's rest day, which represents the Claimant's attempt to extend his rest days.

The System Bulletin prohibits even 1 unexcused absence occurring immediately before a rest day.

The Claimant offered no evidence to substantiate the medical issues he asserted for his 2 mark offs preceding his 2 rest days.

The evidence substantially proves the Claimant's violation of the System Bulletin.

ORGANIZATION POSITION: The Claimant had a broken tooth on 7-13-17, causing severe pain. He telephoned the Carrier AMC desk to request a PLD, but was denied due to 3 other employees being off on leave. The Claimant was then forced to layoff sick. Since the following day was his rest day, the Claimant required only 1 marked off day.

On 8-17-17, the Claimant marked off ill and properly called the Carrier AMC desk. Since the following day was his rest day, the Claimant required only 1 marked off day to recover.

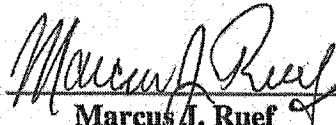
The Carrier has charged the Claimant with a violation of the Bulletin for his mark off on 7-13-17 only after he marked off on 8-17-17. The Claimant could not have known the Carrier was going to retroactively charge him for an earlier mark off, which the Carrier had not taken exception to.

Article 32, Paragraph A of the CBA guarantees the Claimant's right to mark off sick when the need arises.

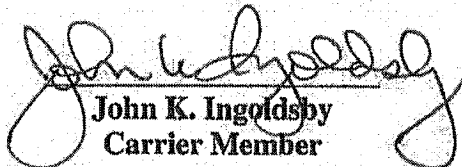
AWARD: The claim is sustained. The Claimant's medical issues on the 2 layoff dates in question could not be prognosticated to avoid preceding a rest day. In fact, the rest days worked to afford the Claimant rehabilitation and healing without necessitating additional sick days.



Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruef
Organization Member



John K. Ingoldsby
Carrier Member

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Case #243

Versus

Award #243

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Whillex Mason

CARRIER FILE: IC-BLET-2018-00003 (Dismissal)

STATEMENT OF CLAIM: Claim of CN/IC Engineer Whillex Mason for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on January 8, 2018. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of U.S. Operating Rule G: Drugs and Alcohol.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

The Claimant appeared before this Board and was given unlimited opportunity to address these matters without examination. The Claimant stated that the Organization had adequately represented him throughout this matter.

On 12-29-17, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's Operating Rule G, to which the Organization and Claimant hereby appeal.

U.S. Operating Rule G states, in pertinent part:

"G. DRUGS AND ALCOHOL.

The use or possession of alcoholic beverages while on duty, on company property, or while occupying facilities paid for or furnished by the company is prohibited. Employees must not have any measurable alcohol in their breath or in their bodily fluids when reporting for duty, while on duty, or while on company property.

While on duty or on company property, the use or possession of intoxicants, over-the-counter or prescription drugs, narcotics, controlled substances, or medication that may adversely affect safe performance is prohibited. Employees must not possess, sell, use, or have in their bodily fluids any illegal drug or controlled substance while on or off duty.

Employees covered by the Federal Hours of Service Act must consent to breath, urine, and blood testing and the release of information required in connection with these tests, under circumstances specified in federal regulations (49 CFR Part 219). When there is evidence of violation of this rule, the employee will be immediately removed from service."

CARRIER POSITION: The Claimant, while serving the Carrier as Engineer; failed a random drug test on 12-14-17. The Claimant tested positive for marijuana, a prohibited substance under the Carrier's policy.

The Claimant failed a previous drug test in December 2015. Following his discipline for that failed drug test, the Claimant became subject to random follow up testing.

The evidence presented proved the test was properly conducted, administered, and tested by credentialed parties. The Claimant had 72 hours to request a split sample and have a secondary lab analysis performed on his urine specimen. The Claimant did not request a split test.

The evidence reflects the Claimant was notified of his random drug test at 8:47 a.m., but the test sample was not received from the Claimant until 10:00 a.m. while he was on duty.

The proven violation of the Carrier's drug and alcohol policy is a Level 4 violation, subject to dismissal.

ORGANIZATION POSITION: The Claimant has served the Carrier for over 21 years as an Engineer.

The Carrier failed to prove the Claimant failed the random drug test. Neither the Carrier Medical Officer nor the Employer Representative, who informed the Claimant of his positive drug test, testified at the investigative hearing. The Carrier also failed to inform the Claimant that he had a right to a second split sample test.

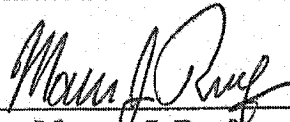
The Carrier's Exhibit 4 also fails to reflect the level of parts per million allegedly found in the urine sample purportedly tested by the Carrier.

The Carrier's evidence reflects the test was performed at 8:47 a.m. on the date in question. The Claimant was not on duty until 9:00 a.m. This DOT test should have been performed while the Claimant was on duty.


AWARD: The claim is denied. The evidence is sufficient to prove the Claimant tested positive for the prohibited substance.



Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruef
Organization Member


John K. Ingoldsby
Carrier Member

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Case #243

Versus

Award #243

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Whillex Mason

CARRIER FILE: IC-BLET-2018-00003 (Dismissal)

STATEMENT OF CLAIM: Claim of CN/IC Engineer Whillex Mason for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on January 8, 2018. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of U.S. Operating Rule G: Drugs and Alcohol.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

The Claimant appeared before this Board and was given unlimited opportunity to address these matters without examination. The Claimant stated that the Organization had adequately represented him throughout this matter.

On 12-29-17, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's Operating Rule G, to which the Organization and Claimant hereby appeal.

U.S. Operating Rule G states, in pertinent part:

"G. DRUGS AND ALCOHOL.

The use or possession of alcoholic beverages while on duty, on company property, or while occupying facilities paid for or furnished by the company is prohibited. Employees must not have any measurable alcohol in their breath or in their bodily fluids when reporting for duty, while on duty, or while on company property.

While on duty or on company property, the use or possession of intoxicants, over-the-counter or prescription drugs, narcotics, controlled substances, or medication that may adversely affect safe performance is prohibited. Employees must not possess, sell, use, or have in their bodily fluids any illegal drug or controlled substance while on or off duty.

Employees covered by the Federal Hours of Service Act must consent to breath, urine, and blood testing and the release of information required in connection with these tests, under circumstances specified in federal regulations (49 CFR Part 219). When there is evidence of violation of this rule, the employee will be immediately removed from service."

CARRIER POSITION: The Claimant, while serving the Carrier as Engineer; failed a random drug test on 12-14-17. The Claimant tested positive for marijuana, a prohibited substance under the Carrier's policy.

The Claimant failed a previous drug test in December 2015. Following his discipline for that failed drug test, the Claimant became subject to random follow up testing.

The evidence presented proved the test was properly conducted, administered, and tested by credentialed parties. The Claimant had 72 hours to request a split sample and have a secondary lab analysis performed on his urine specimen. The Claimant did not request a split test.

The evidence reflects the Claimant was notified of his random drug test at 8:47 a.m., but the test sample was not received from the Claimant until 10:00 a.m. while he was on duty.

The proven violation of the Carrier's drug and alcohol policy is a Level 4 violation, subject to dismissal.

ORGANIZATION POSITION: The Claimant has served the Carrier for over 21 years as an Engineer.

The Carrier failed to prove the Claimant failed the random drug test. Neither the Carrier Medical Officer nor the Employer Representative, who informed the Claimant of his positive drug test, testified at the investigative hearing. The Carrier also failed to inform the Claimant that he had a right to a second split sample test.

The Carrier's Exhibit 4 also fails to reflect the level of parts per million allegedly found in the urine sample purportedly tested by the Carrier.

The Carrier's evidence reflects the test was performed at 8:47 a.m. on the date in question. The Claimant was not on duty until 9:00 a.m. This DOT test should have been performed while the Claimant was on duty.


AWARD: The claim is denied. The evidence is sufficient to prove the Claimant tested positive for the prohibited substance.



Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruef
Organization Member


John K. Ingoldby
Carrier Member

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Case #244

Versus

Award #244

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Ryan Gianoli

CARRIER FILE: IC-BLET-2018-00007 (15 Days)

STATEMENT OF CLAIM: Claim of CN/IC Engineer Ryan Gianoli for the unwarranted discipline of 15 days Actual Suspension from service (January 18, 2018 through February 1, 2018) assessed to Engineer Gianoli. This claim is for compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of U.S. Operating Rules-602: Hand Brakes Air Brake and Train Handling Rules-503: Handbrake Test.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 1-3-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's Operating Rule 503 and 602, to which the Organization and Claimant hereby appeal.

U. S. Operating Rule 503 states:

"503. *SHOVING MOVEMENTS AUTHORIZED BY THE RTC.*

The requirements of Rule 502 do not apply to shoving movements authorized by the RTC on main tracks, controlled sidings, or any track where CTC is in effect.

1. Obtain permission from the RTC. Permission must not be given:

- *until it has been verified there are no authorities or Planned Work limits in effect behind the shoving movement, unless conflicting movements have been protected, or*
- *if the track to be used has been removed from service in the same or overlapping limits.*

2. When authorized under these conditions:

- *movement does not extend beyond train's authority to the main track,*
- *movement will not be made into or within yard limits, automatic interlocking limits, or drawbridges,*
- *movement must not exceed 25 MPH,*
- *movement must not enter or foul a highway-rail grade crossing or pedestrian crossing except as provided by Rule 504, and*
- *movement does not exceed the train's length.*

3. When a shoving movement is made into or within a control point or manual interlocking limits:

- signal governing movement must display an indication more favorable than **RESTRICTING**. (If Restricting is displayed, point protection must be provided under Rule 502 Item 1 or 2),
- each signal affecting the movement must be continuously observed by a member of the crew who can determine that the signal changes to its most restrictive indication after the movement has passed it, and
- movement does not exceed the train's length."

U. S. Operating Rule 602 states, in pertinent part:

"602. **HAND BRAKES.**

Air brakes must never be depended upon to secure unattended equipment. Apply a sufficient number of handbrakes, with a minimum of one, and one additional handbrake for every ten cars left unattended, up to a total of five handbrakes before testing the effectiveness of the handbrakes as prescribed by ABTH Rule 503, applying additional handbrakes as needed to secure; the following examples apply:

- e.g.,
- 1 car – 1 handbrake,
 - 2 cars – 1 handbrake,
 - 10 -19 cars – 2 handbrakes,
 - 20- 29 cars – 3 handbrakes.

NOTE: The above required number of handbrakes must be applied, unless other instructions specify a minimum number of handbrakes at a specific location.

This is also required when moving cars from a track to prevent any remaining cars from moving. If hand brakes are not sufficient, block the wheels. Do not move cars with hand brakes applied, except when testing the effectiveness of the brake.

Do not use extreme physical force when applying or releasing hand brakes. When hand brakes must control or prevent movement, test the brakes to ensure they are operating before depending on them. When the engine is coupled to a train or cars standing on a grade, do not release the hand brakes until the air brake system is charged sufficiently to prevent movement.

If in doubt of securement requirements, a Transportation Supervisor must be contacted immediately.

Every effort must be made, including pre-planning by the Rail Traffic Control Centers to avoid leaving equipment on main tracks or sidings unattended on grades of 0.8% or greater.

If unusual circumstances make it necessary to leave equipment unattended with or without locomotives attached on a track with grades of 0.8% or greater, the RTC must be advised and included in the decision.

When securing equipment without a source of air attached on main track, sidings and spur tracks with grades of 0.4% or greater, the minimum number of handbrakes required will be determined based on the chart contained below.

Procedures for securing unattended equipment on main track and siding with locomotives attached regardless of grade:

- (i) When stopping to secure equipment, the lightest air brake application possible must be used to stop and hold the equipment at rest.

(ii) *Locomotives must be left attached with brake pipe continuity throughout the equipment and air brakes left applied.*

(iii) *When applying handbrakes, do not bleed off cars.*

(iv) *Apply sufficient handbrakes starting from the head end regardless of whether the equipment is being secured on descending or ascending grade. Use the chart below to determine the minimum number of handbrakes required:*

NOTE 1: In the application of the above chart, the highest grade on which the equipment is standing will be used.

NOTE 2: Should the handbrake chart minimum requirements exceed the number of cars in the movement, requirements are considered fulfilled by applying handbrakes on all (100%) cars.

NOTE 3: If in doubt as to track gradient and/or handbrakes required contact the RTC or Yard/Terminal supervisor.

NOTE 4: Where circumstances or the chart requires the application of more than 18 handbrakes, the RTC must be contacted to determine if alternative action should be taken.

NOTE 5: Handbrake requirements in the above table apply to rail cars. Locomotive handbrake application is not to be counted.

(v) *Test the effectiveness of the hand brakes as prescribed by ABTH Rules 503. If conditions do not permit safely performing the handbrake effectiveness test, then the number of handbrakes in the table shall be considered sufficient. Crews must exercise caution and consider possible rollback, block or interlocking signals, switches, public crossings at grade or similar features which are in close proximity to the equipment when testing the effectiveness of the handbrakes applied.*

(vi) *In the application of peer to peer communication between crew members, all crew members must, before leaving the location, confirm through radio communication or personal contact the number and location of handbrakes applied, to ensure compliance with these instructions.*

(vii) *On grades of 0.8% or greater, the number of handbrakes applied must be:*

a. reported to the RTC, and

b. recorded on the Brake Status Report which must be left on the controlling locomotive. In the absence of the brake status report, a written record must be left on the control stand of the controlling locomotive.

(viii) *Secure locomotives and apply air brakes as per ABTH 411."*

CARRIER POSITION: *The Claimant, while serving the Carrier on assignment Q11851-25 on 12-2-17 in Markham Yard; failed to apply the necessary amount of hand brakes to a cut of 24 cars in Track MF17. The Claimant applied only 2 hand brakes, although Rule 602 required 3 hand brakes.*

The Claimant also failed to perform a proper hand brake test on the cut of cars by releasing the automatic and independent brakes for less than the required one-minute period of inspection prior to cutting away from the cars in accordance with Rule 503.

The Claimant also failed to engage in a proper peer-to-peer briefing to confirm the number of cars and the requisite number of hand brakes to be applied in violation of Rule 602.

The Claimant's failure to properly secure the cut of cars resulted in the cars rolling out of the North end of Track MF17 and colliding with locomotive CN 3082.

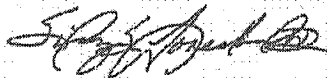
ORGANIZATION POSITION: The Claimant relied on his Conductor (Torrey) who applied 2 hand brakes and stated that he had done the required one-minute test with no signs of car movement.

The cars involved were intermodal cars, requiring a different level of hand brake securement than the rules the Carrier has cited and applied in assessing discipline.

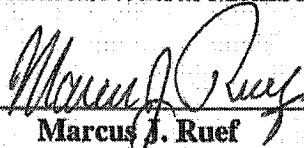
The Conductor believed he tied down the 5-pack intermodal cars sufficiently with 2 hand brakes. Intermodal cars count as 1 car per 5 packs, meaning only 1 hand brake is required for each car control valve cut out, in accordance with the Carrier's System Special Instructions governing permanently coupled cars. The Claimant did not make the determination regarding the number of hand brakes applied.

The responsibility for this incident lies clearly with the Conductor only. The Conductor testified that he unilaterally performed the brake test.

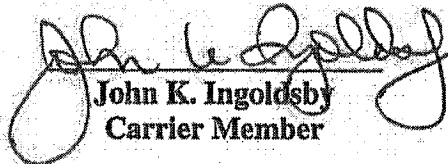
AWARD: The claim is sustained. The evidence does not conclude the Claimant violated Rule 503 or Rule 602.



Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruef
Organization Member



John K. Ingoldsby
Carrier Member

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (Carrier)

Versus

Brotherhood of Locomotive
Engineers & Trainmen (Organization)
and Claimant David Terven

Case #245

Award #245

CARRIER FILE: IC-BLET-2018-00012 (Dismissal)

STATEMENT OF CLAIM: Claim of CN/IC Engineer David Terven for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on January 31, 2018. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of USOR Rule H-Furnishing Information and Conduct.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 1-16-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's U.S. Operating Rules, Rule H, to which the Organization and Claimant hereby appeal.

CN U.S. Operating Rule H states:

"H. FURNISHING INFORMATION AND CONDUCT.

Dishonesty, disloyalty, insubordination, willful neglect, gross carelessness, desertion from duty, making false reports or statements, concealing facts concerning matters under investigation, immoral conduct, including but not limited to conduct of any employee leading to the conviction of any felony, and serious violations of the law are prohibited. Employees must not be quarrelsome, vicious or enter into disputes, arguments, or fights with any person, regardless of provocation. Any incidents are to be reported to the proper authority.

As a CN employee, you are expected to be familiar with, read and be governed by the Company's Code of Business Conduct and policies, and understand how they apply to you and your job. Company policies are accessible on CN's electronic portal (ePortal) in the Employee Self-Service section under Policies and Guidelines.

Any employee convicted of a felony or other serious violation of the law must notify their supervisor no later than the end of the first day immediately following the day the employee received notice of the conviction.

Employees must not withhold information, or fail to provide all the facts to those authorized to receive information regarding accidents, injuries, rule violations, breaches of company security, or unusual events. This duty to furnish information includes but is not limited to accident and injury reports, recorded statements, full cooperation in injury investigations, and safety rules violations. Employees must also take all reasonable measures to protect and preserve evidence where it is within their control and ability to do so."

CARRIER POSITION: The Claimant, while working as Engineer; marked off from December 23, 2017 through December 27, 2017 under false pretenses in an attempt to obtain unexcused time off.

On 12-27-17, the Claimant attempted to mark off FMLA. When informed that he would then have to be placed in medical leave status; he then changed his story and stated he did not have a ride to work. The Claimant admitted to asserting a false mark off attempt by citing FMLA.

The Claimant also marked off on 12-23, 12-24, 12-25, and 12-26 by falsely asserting illness and/or illness in his family.

The Claimant's failure to provide honest information resulted in a proven violation of Rule H governing honesty. The discipline is appropriate.

ORGANIZATION POSITION: The Claimant was improperly withheld from service prior to the investigation, as this matter was not serious and involved no theft and no accident.

The Claimant worked 6 consecutive days without a 24-hour rest period, prior to marking off. The Carrier failed to provide the Claimant's work history, which would have demonstrated the Claimant's diligent work ethic.

The Carrier Charging Officer (Hyatt) gave false testimony about his reasons for not contacting the Claimant and about how, when, and why he held the Claimant out of service. However, the Carrier has assessed no discipline for Mr. Hyatt's dishonesty. Furthermore, the Carrier Officer's false testimony deprives the Claimant of a fair hearing in accordance with Rule 29B of the collective bargaining agreement.

The Carrier refused to allow the tape recordings between the Claimant and the Carrier's Crew Management Center when requested by the Organization, which he could have easily explained.

The Claimant laid off using FMLA on 12-23 and 12-26 for legitimate medical reasons. The Claimant also laid off appropriately with the flu and while his children were suffering with the flu on 12-24 and 12-25. As for 12-27, the Claimant did not lay off nor did he attempt to lay off as the Carrier has falsely asserted.

The Claimant's discipline is unwarranted.

AWARD: The Hearing Officer offered to stop the hearing and afford the Local Chairman any time necessary to review the tapes/transcripts of the Claimant's conversations with the Crew Management Center (*page 12 of the hearing transcript*). The Local Chairman declined.

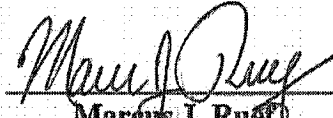
The Claimant changed his story about his purported reasons for laying off on 5 different dates (12-23, 12-24, 12-25, 12-26, 12-27). On 4 of those 5 dates, the

Claimant initially asserted his layoffs were predicated upon FMLA; only to change those stories later after the layoffs occurred. Falsely asserting FMLA is a terminable offense.

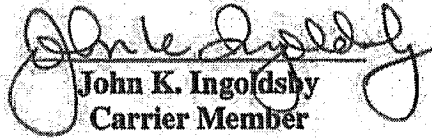
The claim is denied.



**Sidney Moreland
Arbitrator/Neutral Member**



**Marcus J. Ruff
Organization Member**



**John K. Ingoldsbey
Carrier Member**

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Versus

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Scott Sanderson

Case #246

Award #246

CARRIER FILE: IC-BLET-2018-00013 (15 Days)

STATEMENT OF CLAIM: Claim of CN/IC Engineer Scott Sanderson for the unwarranted discipline of 15 days Actual Suspension from service (January 12, 2018 through January 26, 2018) assessed to Engineer Sanderson. This claim is for all compensation lost during suspension, including the time wrongfully withheld from service pending a hearing and removal of all notations from his personal work record of discipline assessed for alleged violation of General Rule A Safety, U.S. Operating Rules-602: Hand Brakes Air Brake and Train Handling Rules-503: Handbrake Test, Peer to Peer Guidelines for Number of Handbrakes.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 1-19-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's Operating Rule 503 and 602, to which the Organization and Claimant hereby appeal.

U. S. Operating Rule 503 states:

"503. *SHOVING MOVEMENTS AUTHORIZED BY THE RTC.*

The requirements of Rule 502 do not apply to shoving movements authorized by the RTC on main tracks, controlled sidings, or any track where CTC is in effect.

1. Obtain permission from the RTC. Permission must not be given:

- until it has been verified there are no authorities or Planned Work limits in effect behind the shoving movement, unless conflicting movements have been protected, or*
- if the track to be used has been removed from service in the same or overlapping limits.*

2. When authorized under these conditions:

- movement does not extend beyond train's authority to the main track,*
- movement will not be made into or within yard limits, automatic interlocking limits, or drawbridges,*
- movement must not exceed 25 MPH,*
- movement must not enter or foul a highway-rail grade crossing or pedestrian crossing except as provided by Rule 504, and*

• movement does not exceed the train's length.

3. When a shoving movement is made into or within a control point or manual interlocking limits:

• signal governing movement must display an indication more favorable than **RESTRICTING**. (If Restricting is displayed, point protection must be provided under Rule 502 Item 1 or 2),

• each signal affecting the movement must be continuously observed by a member of the crew who can determine that the signal changes to its most restrictive indication after the movement has passed it, and

• movement does not exceed the train's length."

U. S. Operating Rule 602 states, in pertinent part:

"602. HAND BRAKES.

Air brakes must never be depended upon to secure unattended equipment. Apply a sufficient number of handbrakes, with a minimum of one, and one additional handbrake for every ten cars left unattended, up to a total of five handbrakes before testing the effectiveness of the handbrakes as prescribed by ABTH Rule 503, applying additional handbrakes as needed to secure; the following examples apply:

*e.g., 1 car – 1 handbrake,
2 cars – 1 handbrake,
10 -19 cars – 2 handbrakes,
20- 29 cars – 3 handbrakes.*

NOTE: *The above required number of handbrakes must be applied, unless other instructions specify a minimum number of handbrakes at a specific location.*

This is also required when moving cars from a track to prevent any remaining cars from moving. If hand brakes are not sufficient, block the wheels. Do not move cars with hand brakes applied, except when testing the effectiveness of the brake.

Do not use extreme physical force when applying or releasing hand brakes. When hand brakes must control or prevent movement, test the brakes to ensure they are operating before depending on them. When the engine is coupled to a train or cars standing on a grade, do not release the hand brakes until the air brake system is charged sufficiently to prevent movement.

If in doubt of securement requirements, a Transportation Supervisor must be contacted immediately.

Every effort must be made, including pre-planning by the Rail Traffic Control Centers to avoid leaving equipment on main tracks or sidings unattended on grades of 0.8% or greater.

If unusual circumstances make it necessary to leave equipment unattended with or without locomotives attached on a track with grades of 0.8% or greater, the RTC must be advised and included in the decision.

When securing equipment without a source of air attached on main track, sidings and spur tracks with grades of 0.4% or greater, the minimum number of handbrakes required will be determined based on the chart contained below.

Procedures for securing unattended equipment on main track and siding with locomotives attached regardless of grade:

(i) When stopping to secure equipment, the lightest air brake application possible must be used to stop and hold the equipment at rest.

(ii) *Locomotives must be left attached with brake pipe continuity throughout the equipment and air brakes left applied.*

(iii) *When applying handbrakes, do not bleed off cars.*

(iv) *Apply sufficient handbrakes starting from the head end regardless of whether the equipment is being secured on descending or ascending grade. Use the chart below to determine the minimum number of handbrakes required:*

NOTE 1: In the application of the above chart, the highest grade on which the equipment is standing will be used.

NOTE 2: Should the handbrake chart minimum requirements exceed the number of cars in the movement, requirements are considered fulfilled by applying handbrakes on all (100%) cars.

NOTE 3: If in doubt as to track gradient and/or handbrakes required contact the RTC or Yard/Terminal supervisor.

NOTE 4: Where circumstances or the chart requires the application of more than 18 handbrakes, the RTC must be contacted to determine if alternative action should be taken.

NOTE 5: Handbrake requirements in the above table apply to rail cars. Locomotive handbrake application is not to be counted.

(v) *Test the effectiveness of the hand brakes as prescribed by ABTH Rules 503. If conditions do not permit safely performing the handbrake effectiveness test, then the number of handbrakes in the table shall be considered sufficient. Crews must exercise caution and consider possible rollback, block or interlocking signals, switches, public crossings at grade or similar features which are in close proximity to the equipment when testing the effectiveness of the handbrakes applied.*

(vi) *In the application of peer to peer communication between crew members, all crew members must, before leaving the location, confirm through radio communication or personal contact the number and location of handbrakes applied, to ensure compliance with these instructions.*

(vii) *On grades of 0.8% or greater, the number of handbrakes applied must be:*

a. reported to the RTC, and

b. recorded on the Brake Status Report which must be left on the controlling locomotive. In the absence of the brake status report, a written record must be left on the control stand of the controlling locomotive.

(viii) *Secure locomotives and apply air brakes as per ABTH 411."*

CARRIER POSITION: The Claimant, while serving as Engineer servicing the BASF Plant near Milepost 57.35 on the Chicago Subdivision on 1-11-18; failed to conduct a proper job briefing with his Conductor to ensure a handbrake was applied and tested to car UTLX41533.

The unsecured car rolled away, crossed a public thoroughfare, crashed through the industry's gate, and derailed.

The Claimant's conduct during the switching movement violated Rule 503.

The Claimant failed to engage in a proper peer-to-peer briefing to confirm the number of cars and the requisite number of hand brakes to be applied in violation of Rule 602.

The testimony and evidence contained in the record established that the actions of Claimant resulted in a violation of the rules listed. There is nothing in the record that would justify a different disciplinary result. The testimony and evidence in the record substantiate the charges against Claimant. The amount of discipline assessed here is in line with the Carrier's Discipline Policy.

ORGANIZATION POSITION: The Claimant relied on his Conductor (Delgado) who never mentioned to the Claimant that the car they just set out had rolled away. The Claimant was on the locomotive 24 cars away from the Conductor performing the switching on the ground.

Afterwards, the Conductor shoved back into the BASF Track with 22 cars and coupled into the errant car and noticed that it had derailed with one set of trucks on the ground; yet the Conductor still did not mention anything to the Claimant over 20 cars away.

The Claimant was wrongfully withheld from service pending the hearing in violation of Article 29.A.

The Carrier failed to provide the Organization with a true and correct copy of the hearing transcript, by omitting the video from BASF that the Carrier used during the hearing.

The responsibility for this incident lies clearly with the Conductor only.

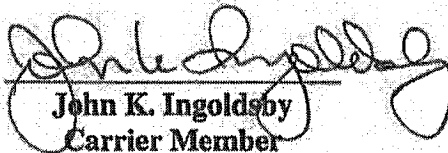
AWARD: The claim is sustained. The evidence does not prove the Claimant violated Rule 503 or Rule 602.



Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruef
Organization Member



John K. Ingoldby
Carrier Member

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Case #247

Versus

Award #247

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Marcus Bowie

CARRIER FILE: IC-BLET-2018-00014 (15 Days)

STATEMENT OF CLAIM: Claim of CN/IC Engineer Marcus Bowie for the unwarranted discipline of 15 days Actual Suspension from service (January 17, 2018 through January 31, 2018) assessed to Engineer Bowie. This claim is for compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of ABTH 306-Automatic Break.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 1-23-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's Air Brake, Train Handling Rule 306, to which the Organization and Claimant hereby appeal.

ABTH Rule 306 states:

"306. Automatic Brake:

Use incremental reductions for planned slowdowns and stops as follows:

1. *Actuate and then make a minimum reduction.*
2. *Wait at least 20 seconds after the initial brake pipe reduction before making any further reductions. While continuing to actuate, make further brake pipe reductions in 2 to 3 PSI increments, as required."*

CARRIER POSITION: The Claimant, while serving as Engineer on the M30271-06 at Milepost 782 on the McComb Subdivision on 1-7-18; placed his train into an emergency application without following the procedures required in Air, Brake, Train Handling Rule 306.

The Claimant failed to make a minimum reduction of his brakes and then wait at least 20 seconds before making any further reductions. The Claimant also failed to make further brake pipe reductions in 2 to 3 PSI increments.

Although Claimant was not found in violation of providing false statements, there is clear evidence he was not forthcoming about all the facts of the incident when first asked. There is nothing to prevent the Carrier from charging an employee with a violation in connection with an incident for which he has been notified he is under investigation for.

There is nothing in the record that would justify a different disciplinary result. The testimony and evidence in the record substantiate the charges against Claimant.

ORGANIZATION POSITION: The Claimant was charged with making false statements, but when the discipline letter was issued, the Claimant was disciplined for a violation of ABTH Rule 306.

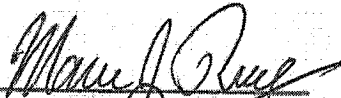
The Carrier's Supervisor of Locomotive Engineers (Coln) testified that this incident was a "coaching session" with the Claimant. The Carrier cannot later determine to also render a second discipline in the form of a 15-day suspension.

The discipline is not what the investigation was called for, and the claim should be sustained.

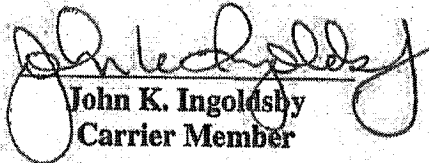
AWARD: The claim is denied. The evidence proved a violation of ABTH Rule 306 by the manner in which the Claimant handled the train.



Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruel
Organization Member



John K. Ingoldshy
Carrier Member

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Case #248

Versus

Award #248

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Michael Houston

CARRIER FILE: IC-BLET-2018-00058 (Dismissal)

STATEMENT OF CLAIM: Claim of CN/IC Engineer Michael Houston for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on May 1, 2018. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of U.S. Operating Rule G: Drugs and Alcohol.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 4-17-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's Operating Rule G, to which the Organization and Claimant hereby appeal.

U.S. Operating Rule G states, in pertinent part:

"G. DRUGS AND ALCOHOL.

The use or possession of alcoholic beverages while on duty, on company property, or while occupying facilities paid for or furnished by the company is prohibited. Employees must not have any measurable alcohol in their breath or in their bodily fluids when reporting for duty, while on duty, or while on company property.

While on duty or on company property, the use or possession of intoxicants, over-the-counter or prescription drugs, narcotics, controlled substances, or medication that may adversely affect safe performance is prohibited. Employees must not possess, sell, use, or have in their bodily fluids any illegal drug or controlled substance while on or off duty.

Employees covered by the Federal Hours of Service Act must consent to breath, urine, and blood testing and the release of information required in connection with these tests, under circumstances specified in federal regulations (49 CFR Part 219). When there is evidence of violation of this rule, the employee will be immediately removed from service."

CARRIER POSITION: The Claimant, while serving the Carrier as Engineer on Assignment L53291-19 at Centralia, Illinois; failed a random DOT drug test on 3-20-18. The Claimant tested positive for cocaine metabolites, a prohibited substance under the Carrier's policy.

The Claimant's first sample was determined to be invalid for testing due to its' erratic temperature. The temperature was shown to the Claimant. A second sample was provided by the Claimant two hours later.

The evidence presented proved the test was properly conducted, administered, and tested by credentialed parties. The Claimant had 72 hours to request a split sample and have a secondary lab analysis performed on his urine specimen. The Claimant did not request a split test despite his self-serving testimony that he "faxed" a request to the Carrier for a split test, the Claimant could not provide a copy of the alleged fax.

The proven violation of the Carrier's drug and alcohol policy is a Level 4 violation, subject to dismissal.

ORGANIZATION POSITION: The Claimant has served the Carrier for over 6 years as an Engineer with no discipline whatsoever on his record.

The Carrier denied the Organization's reasonable request for a postponement of the investigative hearing in violation of Article 29. C. of the parties' Agreement.

The Carrier failed to prove the Claimant failed the random drug test. Neither the Carrier Medical Officer nor the employees of Midland Laboratories, who administered the test and informed the Claimant of the results; testified at the investigative hearing.

The Carrier also failed to allow the Claimant the right to a second split sample test. The Claimant testified that he requested the split test on the phone with Dr. Cheng, the Carrier MRO. The Claimant also testified that he faxed his request to the MRO.

The Carrier produced the first sample document signed by the Claimant, which reflects the Claimant's signature. That sample was discarded. The Carrier produced the second sample document and the signature on that document is not the Claimant's. The Claimant avers that he did not sign the document verifying that he submitted the second urine sample that was ultimately used against him.

The Organization asserts this was a botched drug test, which should have been discarded without discipline.

AWARD: The claim is denied. The Substance and Alcohol Free Environment policy states at Rule 6.8: "*Employees may request a test of the split specimen to challenge the laboratory findings for verified positive drug tests, or verified adulterated and substituted test results, provided the request is made in writing within 72 hours from the time and date the employee is notified of the test results by the MRO.*" The Claimant provided no evidence of any written request for a split sample test.



Sidney Moreland
Arbitrator/Neutral Member

Dissent Attached

Marcus J. Ruef
Organization Member

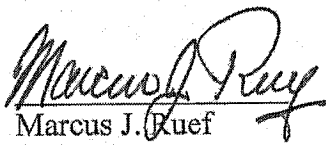
John K. Ingoldsby

John K. Ingoldsby
Carrier Member

PUBLIC LAW BOARD No. 7154
ORGANIZATION MEMBER'S DISSENT
Case No. 148 – Award No. 148
Neutral Member Sidney Moreland

We are disheartened by the Majority's failure to correctly evaluate the evidence and fully appreciate the regulatory aspect of this case. The Claimant testified without rebuttal (Transcript – p. 108) that he made both a written and verbal request to the MRO at the time of his verification interview to have his split sample tested, as was his demand right (see, 49 CFR 40.153). It is well settled that unrefuted testimony stands as fact, especially where, as here, the MRO could have been produced to testify in response to the Claimant, but was not. When an employee exercises their right to split sample testing in these circumstances, the outcome of the test then shifts to the result of the split sample test (see, Award 15 of PLB 5423 (Peterson)). Where the split sample is requested, but no test is performed, the Carrier loses its foundation to declare the test positive.

While the Majority places emphasis on the Claimant's failure to retain evidence of having submitted a written request, and the Carrier's policy requiring such requests in writing, their hollow artifice is belied by the Carrier Medical Department witness' testimony that requests could be made either verbally or in writing (Transcript – p. 86), and the regulation's requirement, set out at 49 CFR 40.153(c), that the MRO maintain 24-hour answering service with time stamp capability. It was fundamentally unfair, on the basis of this record, for the Majority to flip the burden to the Claimant, whose unrefuted testimony should have been credited. I dissent to this miscarriage of industrial justice.


Marcus J. Ruef
Organization Member
November 14, 2018

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Case #249

Versus

Award #249

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Marcus Bowie

CARRIER FILE: IC-BLET-2018-00026 (Dismissal)

STATEMENT OF CLAIM: Claim of CN/IC Engineer Marcus Bowie for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on March 7, 2018. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of USOR Rule H-Furnishing Information and Conduct, USOR 208-Emergency Calls, and USOR 518-Movement at Restricted Speed.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 2-20-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's U.S. Operating Rules, Rule H, Rule 208, and Rule 518 to which the Organization and Claimant hereby appeal.

CN U.S. Operating Rule H states:

"H. FURNISHING INFORMATION AND CONDUCT.

Dishonesty, disloyalty, insubordination, willful neglect, gross carelessness, desertion from duty, making false reports or statements, concealing facts concerning matters under investigation, immoral conduct, including but not limited to conduct of any employee leading to the conviction of any felony, and serious violations of the law are prohibited. Employees must not be quarrelsome, vicious or enter into disputes, arguments, or fights with any person, regardless of provocation. Any incidents are to be reported to the proper authority.

As a CN employee, you are expected to be familiar with, read and be governed by the Company's Code of Business Conduct and policies, and understand how they apply to you and your job. Company policies are accessible on CN's electronic portal (ePortal) in the Employee Self-Service section under Policies and Guidelines.

Any employee convicted of a felony or other serious violation of the law must notify their supervisor no later than the end of the first day immediately following the day the employee received notice of the conviction.

Employees must not withhold information, or fail to provide all the facts to those authorized to receive information regarding accidents, injuries, rule violations, breaches of company security, or unusual events. This duty to furnish information includes but is not limited to accident and injury reports, recorded statements, full cooperation in injury investigations, and safety rules violations. Employees must also take all reasonable measures to protect and preserve evidence where it is within their control and ability to do so."

CN U.S. Operating Rule 208 states:

"208. EMERGENCY CALLS.

Emergency calls begin with the words, "Emergency, Emergency, Emergency," and are used for emergency stops, severe slack action while stopping, initial reports of derailments, collisions, storms, washouts, fires, track obstructions, property damage, or injury to employees or the public.

All employees must give absolute priority to an emergency communication. Unless they are answering or aiding the emergency call, employees must not send any communication until they are certain no interference will result."

CN U.S. Operating Rule 518 states:

"518. MOVEMENT AT RESTRICTED SPEED.

When a train or engine is required to move at restricted speed, it must proceed prepared to stop within one-half the range of vision short of

- *Train,* [SEP]
- *Engine,* [SEP]
- *Railroad car,* [SEP]
- *Roadway Workers or on-track equipment fouling the track,* [SEP]
- *Stop Signal, or* [SEP]
- *Derail or switch lined improperly.* [SEP]

The crew must keep a lookout for broken rail and not exceed 20 MPH. [SEP]

Comply with these requirements until the leading wheels reach a point where movement at restricted speed is no longer required." [SEP]

CARRIER POSITION: The Claimant, while working as Engineer on the G-88892-07 in Destrehan Yard on 2-10-18; failed to operate his train at restricted speed inside the yard and collided with a group of rail cars set out. The Claimant also failed to notify the Yardmaster of his collision.

The Claimant's collision with the cars resulted in damage to CN 2511 and the TILX 518865.

The Claimant's failure to notify anyone of his collision is a proven violation of Rule 208 requiring emergency calls.

The Claimant's failure to operate his train at restricted speed inside Destrehan Yard is a proven violation of Rule 518.

The Claimant's failure to provide honest information resulted in a proven violation of Rule H governing honesty.

The discipline is appropriate.

ORGANIZATION POSITION: The Claimant has over 20 years of service with the Carrier.

The Carrier failed to timely assess discipline upon the Claimant within 15 days following the investigative hearing in violation of Article 29. D. of the parties' Agreement.

The Carrier failed to call as witness the Yardmaster (Cloud) who actually issued the Claimant's instructions on the date of the incident. Instead, the Carrier offered the Yardmaster's emails, which is hearsay. The Yardmaster was responsible for having the A 420 train set the cars out in a problematic location that was different from what the Claimant and his crew were led to believe.

The Carrier further denied the Claimant a fair hearing by the Hearing Officer's failure to sequester the witnesses. This allowed all Carrier witnesses to know verbatim how each testified.

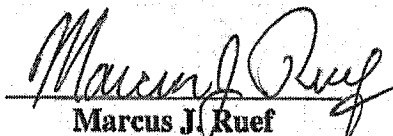
The Claimant's Conductor (Green) furnished the Carrier with information of the collision moments after the incident. The Carrier's inaudible evidence should not be used to assert otherwise. Although the Conductor admitted he did not use the words "emergency, emergency, emergency"; he did report the incident.

The Claimant's discipline is unwarranted due to the Carrier's numerous procedural errors.

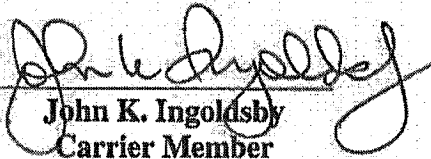
AWARD: The claim is denied. The evidence substantiated the Rule 208, Rule 518, and Rule H violations.



Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruef
Organization Member



John K. Ingoldsby
Carrier Member

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Case #250

Versus

Award #250

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Bobby Reed

CARRIER FILE: IC-BLET-2018-00032 (5 Days)

STATEMENT OF CLAIM: Claim of CN/IC Engineer Bobby Reed for the unwarranted discipline of 5 days Deferred Suspension from service (March 23, 2018 through March 27, 2018) assessed to Engineer Reed. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR-General Rule I-Duty-Reporting or Absence.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 3-9-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's U.S. Operating Rules, Rule I, to which the Organization and Claimant hereby appeal.

CN U.S. Operating Rule I states:

"I. DUTY-REPORTING OR ABSENCE

Employees must report for duty at the designated time and place with the necessary equipment ready to perform their duties. Employees subject to call must provide necessary contact information to those required to call them and be available to accept the call.

Employees must not engage in other business, be absent, allow others to fill their assignment, or exchange duties with others, unless authorized to do so.

Employees must immediately give change of address and telephone number to their supervisor and those required to call them to duty. Employees must call for their mail regularly and answer correspondence promptly.

Employees are required to work regularly and without excessive layoffs or absences. An employee who is permitted to lay off is expected to mark up promptly within 24 hours or less of the mark-off time, unless the employee requests and receives permission to be off for a specific period of time longer than 24 hours."

CARRIER POSITION: The Claimant had 2 unexcused absences during the 12-week period ending 2-16-18.

The Claimant's first unexcused absence was on 1-1-18, which was on a holiday.

The Claimant's second unexcused absence was on 2-16-18, which was following a rest day.

The Claimant's 2 unexcused absences exceed the Attendance Guidelines threshold for being excessively absent.

The evidence substantially proves the Claimant's actions resulted in a violation of the Attendance Guidelines and USOR General Rule I, governing reporting for duty and absenteeism.

ORGANIZATION POSITION: The Claimant was sick on 1-16-18.

The Claimant was sick from 2-14-18 through 2-17-18, and provided medical documentation of this illness from Baptist Minor Medical Center in Bartlett, TN. His off days were 2-14 and 2-15. He missed only 1 day off on 2-16.

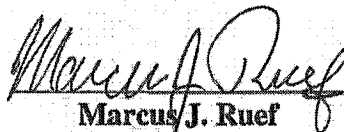
Article 32. 1. Paragraph A of the parties' Agreement states that "*Engineers shall not be expected to work when sick*".

The Claimant does not have a history of missing work and his Employee Performance Score Cards of the prior 2 years are exemplary. In 2015, the Claimant was available all but 3 days. In 2016, the Claimant was available all but 7 days.

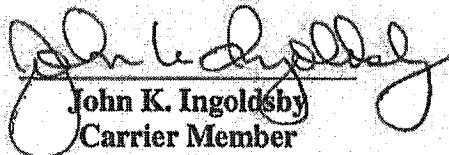
AWARD: The claim is denied.



Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruef
Organization Member



John K. Ingoldsby
Carrier Member

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Case #251

Versus

Award #251

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Anne Panek

CARRIER FILE: IC-BLET-2018-00042 (15 Days)

STATEMENT OF CLAIM: Claim of CN/IC Engineer Anne Panek for the unwarranted discipline of 15 days Actual Suspension from service (April 5, 2018 through April 19, 2018) assessed to Engineer Panek. This claim is for compensation lost during suspension and removal of all notations from her personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of ABTH 300-Train Handling General Procedures, ABTH 302-Throttle, ABTH 320-Starting Train, and ABTH 330-Wheel Slip.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 3-23-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's Air Brake Train Handling Rule 300, Rule 302, Rule 320, and Rule 330, to which the Organization and Claimant hereby appeal.

CARRIER POSITION: The Claimant, while serving as Engineer on the L53591-06 at Milepost 19.9 on the Joliet Subdivision on 2-6-18 and while servicing the industry lead at Rowell Chemical; allowed one of her locomotives to spin and ultimately burn the Main Track #1 due to her improper throttle usage and train handling procedures.

The Claimant's failure to properly handle the train is a proven violation of ABTH Rule 300.

The Claimant's use of too much throttle in the situational circumstance is a proven violation of ABTH Rule 302.

The Claimant's failure to correctly start her train while commencing the move in question is a proven violation of ABTH Rule 320.

The Claimant's actions in allowing the rear locomotive wheels to slip, spin, and ultimately burn the rail on Main Track #1 is a proven violation of ABTH Rule 330.

There is nothing in the record that would justify a different disciplinary result. The testimony and evidence in the record substantiate the charges against Claimant.

ORGANIZATION POSITION: The Carrier failed to hold the investigative hearing timely due to the Carrier's unilateral postponement of the hearing twice. The incident occurred on 2-6 and the hearing was not held until 44 days later on 3-23.

The Claimant has over 44 years of service with the Carrier with 41 as an Engineer.

The Claimant had no way of knowing if/when her trailing locomotive was spinning without a warning system to alert her, such as a wheel slip light indicator.

It is further noted that locomotives are not ordinarily reactive to wheel spinning, as the wheel slip relay will drop the load (Amps) of the locomotive. The evidence therefore concludes that the Claimant was experiencing a defective locomotive beyond her control or knowledge.

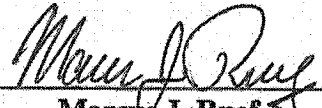
The cause of the defect was potentially the jumper cables between the two locomotives and/or another electrical problem on the trailing locomotive. Unfortunately, the Carrier did not consult with the Mechanical Department to investigate the cause of the locomotive malfunction.

Upon realizing some possible rail damage, the Claimant immediately reported it.

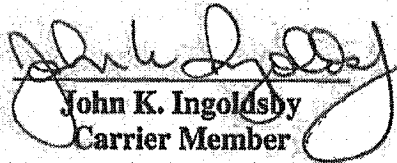
AWARD: The claim is sustained. The Claimant's lead locomotive provided no indicator that her trailing locomotive was spinning. The Claimant promptly reported the mechanical problem upon realizing it.



Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruef
Organization Member



John K. Ingoldsby
Carrier Member

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Versus

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Russell Wigley

Case #252
Award #252

CARRIER FILE: IC-BLET-2018-00103

STATEMENT OF CLAIM: Claim of CN/IC Engineer Russell Wigley for the unwarranted discipline of dismissal from service assessed to Engineer Wigley. After a formal investigation on July 31, 2018, Engineer Wigley was assessed dismissal on August 20, 2018. This claim is for all compensation lost during dismissal and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR L-Communication and Electronic Devices.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

The Claimant appeared before this Board and was afforded the unlimited opportunity to address these matters without examination. The Claimant also stated that the Organization had adequately represented him throughout this matter.

On 8-6-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of U.S. Operating Rule L, to which the Organization and Claimant hereby appeal.

Rule L states in relevant part:

"The use of railroad supplied or personal electronic devices must not interfere with operating employees covered by the Federal HOS law during performance of safety related duties,

Operating Employees use of Personal electronic Devices

Except as otherwise authorized by the company or in an emergency, operating employees are prohibited from possessing, on their person, any electronic communications device, such as a cellular phone, personal entertainment device, or any other similar device while on duty. In a Yard or Terminal, these devices are to be left in your personal vehicle, locker or other location where they will not be readily accessible while on duty. Employees working over-the-road trains, locals, road switchers or any movement operating outside the limits of a yard or Terminal may take their personal electronic devices with them, however, these devices must be powered off and placed in your work bag or grip and only used in the case of an emergency...."

CARRIER POSITION: The Claimant, while serving as Engineer on the U26051-11 at Milepost 43.55 on the Hammond Subdivision on 7-30-18; was observed by a Carrier Trainmaster operating a personal electronic device in the locomotive while an Engineer in training under Claimant's direction was operating the locomotive. The Claimant appeared to be watching/playing a video feature or game on his handheld electronic device. The Claimant did not have authority to use a personal electronic device.

The Claimant avers he was telephoning a sick relative, which is not a permissible reason for violating the cited rule while engaged in the operation of the train or while supervising an Engineer trainee.

It is noted that Claimant had stopped the train due to malfunctioning crossing devices, which necessitated a higher level of care at the time.

The Claimant's use of a personal electronic device in the locomotive is a proven violation of U.S.O.R. Rule L.

A violation of Rule L is a Level 2 Violation involving conduct, which is serious and/or has the potential to result in an accident or incident, damage equipment, or cause injury.

This incident represents the Claimant's second Level 2 violation. The Claimant also has an active attendance violation on his record. Accordingly, the Claimant's dismissal is warranted.

There is nothing in the record that would justify a different disciplinary result. The testimony and evidence in the record substantiate the charges against Claimant.

ORGANIZATION POSITION: The Claimant was forthright and honest about using his cell phone to telephone his sister who is coping with the sudden loss of her husband.

The Claimant has undergone personal stress partially related to the loss of his best friend/brother-in-law/fellow Engineer. The Claimant has reached out to EAP for assistance and has been referred to a Counselor.

The Claimant's prior attendance issue is the result of a single missed call due to the aforementioned personal matter preventing him from working on that occasion. The Carrier assessed the Claimant a Level 2 for the missed call, despite the discipline policy's failure to classify a missed call as Level 2.

The evidence also shows the Claimant had immediately responded to the Carrier's stop test and had undertaken all necessary steps required. The Organization contends that this clearly demonstrates the Claimant's attentiveness and compliance with rules and orders on the date in question.

The Organization further asserts that the dismissal is harsh, excessive, and not commensurate with the Carrier's stated objectives of assisting valued employees undergoing personal crisis.

AWARD: The Claimant's record contains only a single prior Rule I violation dated 5-7-18. The Carrier incorrectly asserts that Rule I is a Level 2 violation of the Carrier's Discipline Policy. Said Discipline Policy describes Level 2 violations as *"serious and/or has the potential to result in an accident or incident, damage equipment, or cause injury and does not meet otherwise the criteria for a Level 3 or Level 4 Rule violation."* As a matter of logic, Attendance Guideline and/or Rule I violations, whereby the result is the employee not working at all; cannot possibly meet the criteria described in the Carrier's Level 2 definition.

The dismissal at hand, predicated upon the Carrier's erroneous interpretation and assessment of the Claimant's disciplinary record, requires Board correction.

The Carrier's Discipline Policy Matrix states in relevant part at Page 10:

How Many Past Combination of Level 1, Level 2, and Level 3 Rule Violations in the Last Three Years?

One Past
Level 1 Violation

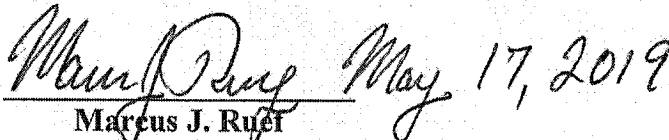
Discipline for new Level 2 Violation is:

15-day
Suspension

The claim is sustained in part. The dismissal of the Claimant is converted to a 15-day suspension.



Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruff
Organization Member

John K. Ingoldsby
Carrier Member

Heard 5-10-19

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (Carrier)

Versus

Brotherhood of Locomotive
Engineers & Trainmen (Organization)
and Claimant Madalle Winchester

Case #253
Award #253

CARRIER FILE: IC-BLET-2018-00104

STATEMENT OF CLAIM: Claim of CN/IC Conductor/Engineer Madalle Winchester for the unwarranted discipline of 5 days Actual Suspension from service (August 10, 2018 through August 14, 2018) assessed to Engineer Winchester. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR I-Duty-Reporting of Absence.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 7-30-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's U.S. Operating Rules, Rule I, to which the Organization and Claimant hereby appeal.

CN U.S. Operating Rule I states:

"I. DUTY-REPORTING OR ABSENCE

Employees must report for duty at the designated time and place with the necessary equipment ready to perform their duties. Employees subject to call must provide necessary contact information to those required to call them and be available to accept the call.

Employees must not engage in other business, be absent, allow others to fill their assignment, or exchange duties with others, unless authorized to do so.

Employees must immediately give change of address and telephone number to their supervisor and those required to call them to duty. Employees must call for their mail regularly and answer correspondence promptly.

Employees are required to work regularly and without excessive layoffs or absences. An employee who is permitted to lay off is expected to mark up promptly within 24 hours or less of the mark-off time, unless the employee requests and receives permission to be off for a specific period of time longer than 24 hours."

CARRIER POSITION: The Claimant had 2 unexcused absences on 4-15-18 (absence prior to vacation day) and on 6-24-18 (absence prior to FMLA day); all within the preceding 12-week period.

The Claimant has a duty to work regularly and if he needed time off to attend to issues he must make use of other authorized leave, including a leave of absence, contractually authorized leave or FMLA Leave. Claimant failed to utilize any of these options and was found in violation of the rule cited.

The Claimant's unexcused absences exceed the Attendance Guidelines threshold for being excessively absent.

The evidence substantially proves the Claimant's actions resulted in a violation of the Attendance Guidelines and USOR General Rule I, governing reporting for duty and absenteeism.

ORGANIZATION POSITION: The Organization contends that 2 non-contractual days off for sickness in a 12-week period is simply not excessive.

The Claimant was available for work 1,584 hours not counting the 2 days off. This means the Claimant was otherwise available to the Carrier 97% of the time during this time frame.

The Claimant was sick and marked off FMLA on 4-14-18, which is an excusable absence. The Carrier's assessment of discipline for this is harassing and runs counter to the federal laws entitling FMLA layoffs.

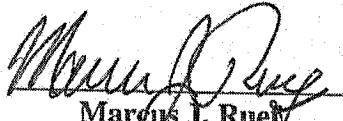
Article 32. 1. Paragraph A of the parties' Agreement states that "*Engineers shall not be expected to work when sick*".

The Organization asserts that for the reasons stated, the claim should be sustained.

AWARD: The claim is denied. The Claimant has not provided evidence of his sickness on 4-15-18 and/or 6-24-18, which would excuse said absences from discipline pursuant to Article 32 of the parties' collective bargaining agreement.

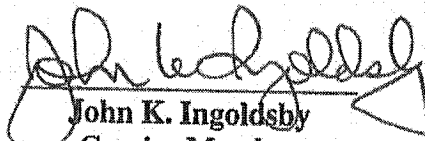


Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruen
Organization Member

May 17, 2019



John K. Ingoldsby
Carrier Member

16 MAY 2019

Heard 5-10-18

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Versus

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Brad Stapleton

Case #254

Award #254

CARRIER FILE: IC-BLET-2018-00105

STATEMENT OF CLAIM: Claim of CN/IC Engineer Brad Stapleton for the unwarranted discipline of dismissal from service assessed on August 29, 2018. This claim is for all compensation lost during the unwarranted dismissal and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of ABTH Rule 108-Class III Trainline Continuity Inspection.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 8-14-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of ABTH Rule 108, to which the Organization and Claimant hereby appeal.

ABTH Rule 108 states in relevant part:

"A trainline continuity test must be performed when the configuration of the train as follows:

- Any locomotive in the consist has changed; or*
- Only one solid block of cars are set out from the train; or*
- At a point other than the initial terminal or the train, where a solid block of cars is added to the train that have previously received a Class I or Class II Brake test and have not been off air for more than four hours...*

Procedure for Testing and inspection

- Charge the brake system to within 15 psi of the regulating valve setting, but not less than 75 psi, as indicated by an accurate gauge at the rear of the train.*
- Make a 20 psi brake pipe reduction.*
- Determine that the brakes apply and release on the rear car.*
- If available, end-of-train telemetry device may be used to verify the application and release of the brakes on the rear car of the train.*
- Before proceeding it must be known that the brake pipe pressure is being restored."*

CARRIER POSITION: The Claimant, while serving as Engineer on the X48871-05 at Milepost 396.8 on the Shelby Subdivision on 8-5-18; operated his train through an improperly lined switch. As a result of the run through switch, a download of

the Claimant's train revealed that Claimant failed to perform a Class 3 Trainline Continuity Inspection in accordance with ABTH Rule 108.

A continuity inspection is required following the connection of a train to ensure that the airbrake line is complete and capable of functioning throughout the entire train. The Claimant did not dispute the fact that he failed to perform the inspection test.

The Claimant had sole responsibility for performing the test in the absence of the Conductor. Since the train was equipped with an EOT device, the Claimant could have performed the test from the locomotive.

A violation of ABTH Rule 108 is a Level 3 Violation, subject to possible dismissal and which involves conduct that may subject an employee to mandatory de-certification pursuant to FRA regulations. Failure to perform a Class III Brake Test is a de-certifiable event.

This incident represents the Claimant's second serious violation, including his previous Level 2 violation in the prior month. The Claimant also has an active attendance violation on his record. Accordingly, the Claimant's dismissal is warranted.

There is nothing in the record that would justify a different disciplinary result. The testimony and evidence in the record substantiate the charges against Claimant.

ORGANIZATION POSITION: The Carrier failed to give the Claimant a fair and impartial investigation. The original charge letter included the Claimant's Conductor (Cupstid). A second charge letter of the same date did not include the Conductor. This reflects the Carrier's pre-determination of the Claimant's guilt. Furthermore, the Carrier failed to call the Conductor as a witness.

The federal regulations governing the certification of Conductors requires that Conductors ensure the Engineer performs the brake test.

In the instant matter, the Claimant is a good employee with an unprecedented and short history of bad luck.

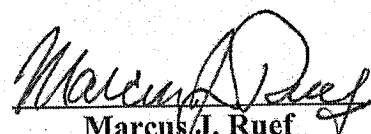
The Claimant was furthermore very honest and forthright about his error in forgetting to perform the brake test; an error that could have been avoided by a simple reminder from the Conductor.

The Organization further asserts that the dismissal is harsh, excessive, and unwarranted and the claim should be sustained.

AWARD: The claim is denied.

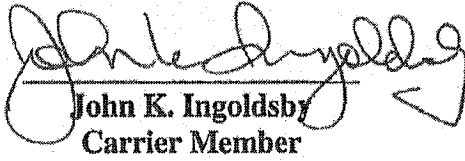


Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruef
Organization Member

May 17, 2019


John K. Ingoldsby
Carrier Member

16 MAY 2019

Heard 5-10-19

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)
Versus

Case #255
Award #255

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Darnell Sutton

CARRIER FILE: IC-BLET-2018-00136

STATEMENT OF CLAIM: Claim of CN/IC Engineer Darnell Sutton for the unwarranted discipline of 5 days Actual Suspension from service (October 25, 2018 through October 29, 2018) assessed to Engineer Sutton. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR I-Duty-Reporting of Absence and USOR 100-Rules, Regulations, and Instructions.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 10-17-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's U.S. Operating Rules, Rule I and Rule 100, to which the Organization and Claimant hereby appeal.

U.S. Operating Rule I states:

"I. DUTY-REPORTING OR ABSENCE

Employees must report for duty at the designated time and place with the necessary equipment ready to perform their duties. Employees subject to call must provide necessary contact information to those required to call them and be available to accept the call.

Employees must not engage in other business, be absent, allow others to fill their assignment, or exchange duties with others, unless authorized to do so.

Employees must immediately give change of address and telephone number to their supervisor and those required to call them to duty. Employees must call for their mail regularly and answer correspondence promptly.

Employees are required to work regularly and without excessive layoffs or absences. An employee who is permitted to lay off is expected to mark up promptly within 24 hours or less of the mark-off time, unless the employee requests and receives permission to be off for a specific period of time longer than 24 hours."

U.S. Operating Rule 100 states:

"100 Rules, Regulations, & Instructions

Employees must be familiar with and obey all rules, regulations and instructions. They must attend required classes with current rule book, timetables and instructions, and must pass

the required examinations. Employees must cooperate and assist in carrying out the rules and instructions. They must promptly report any violations to the proper supervisor.

Employees must ask their supervisor for an explanation of any rule, regulation, or instruction of which they are unsure.

Prior to beginning each shift or tour of duty, all engineers, conductors, and trainmen must ensure their Engineer or Conductor Certification is in their possession and it is valid. If there is any doubt about the validity of the certificate, contact a supervisor prior to going on duty. Do not work past the expiration date shown on the certificate."

CARRIER POSITION: The Claimant had 3 unexcused absences on 7-1-18 (absence prior to an FMLA day); 8-4-18 (absence following a rest day); and on 9-22-18. All 3 absences were within the preceding 12-week period.

The Claimant has a duty to work regularly and if he needed time off to attend to issues he must make use of other authorized leave, including a leave of absence, contractually authorized leave or FMLA Leave. Claimant failed to properly utilize these options and was found in violation of the rule cited.

The Claimant's unexcused absences exceed the Attendance Guidelines threshold for being excessively absent. Each additional unexcused absence triggers a new violation. Otherwise, an employee could continue violating the attendance guidelines and there would be no motive for an employee to improve their attendance record.

The evidence substantially proves the Claimant's actions resulted in a violation of the Attendance Guidelines; USOR General Rule I; and Rule 100 governing reporting for duty and absenteeism and the adherence to rules, regulations, and instructions.

ORGANIZATION POSITION: The Organization contends that 3 non-contractual days off for sickness in a 12-week period is simply not excessive.

The Claimant complied with Rule I, which must be read in its' entirety. Rule I states that employees are required to work "regularly" and an employee who is permitted to lay off is expected to mark up promptly or within 24 hours or less. The Claimant complied each time he marked off.

Since Claimant complied with Rule I, then there is no Rule 100 violation.

The Claimant was sick and marked off FMLA on 7-2-18, which is an excusable absence. He marked off the day before when he believed he was becoming ill. The Carrier's assessment of discipline for this is harassing and runs counter to the federal laws entitling FMLA layoffs.

Article 32. 1. Paragraph A of the parties' Agreement states that "*Engineers shall not be expected to work when sick*".

The Claimant was disciplined by letter of reprimand for the 2 absences on 7-1-18 and 8-4-18, pursuant to the Carrier's non-negotiated discipline policy. While the Carrier is free to reference these 2 prior disciplines, the Claimant cannot be disciplined twice for the same alleged violation.

The Organization asserts that for the reasons stated, the claim should be sustained.

AWARD: The Claimant was sick on 9-22-18, as verified by his treating physician (Exhibit 10). The parties' collective bargaining agreement states at Article 32 that "*Engineers shall not be expected to work when sick, but in case of being compelled to lay off on account of sickness...should in some manner notify the proper authority...*"

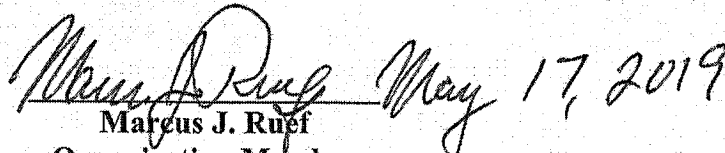
The Carrier is in the implementation stages of new Attendance Guidelines that excuses absences for 3 stated reasons only, *to wit*: FMLA, medical leave of absence, and absences whereby proper approval has been granted (without defining proper approval or how such approval is obtained). All other absences, regardless of their nature, are deemed unexcused and may subject the employee to discipline. The collective bargaining agreement supersedes the Attendance Guidelines, and where an employee has provided evidence of an illness, he/she shall not be disciplined for that layoff occurrence.

The Claimant's 9-22-18 absence is an excused absence pursuant to Article 32 of the Agreement. The Claimant's 7-1-18 and 8-4-18 absences for sickness were not addressed in the evidence Claimant provided since Claimant believed those matters were settled. Likewise, the Board must consider the first 2 attendance violations as resolved and provide adjustment only for the 9-22-18 absence and the 5-day suspension improperly assessed.

The claim is sustained.



Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruef
Organization Member

John K. Ingoldsby
Carrier Member

Heard 5-10-18

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Versus

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Jeremiah Llewellyn

Case #256

Award #256

CARRIER FILE: IC-BLET-2018-00137

STATEMENT OF CLAIM: Claim of CN/IC Engineer Jeremiah Llewellyn for immediate reinstatement to service and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on November 9, 2018. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket costs for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of USOR C-Alert and Attentive, USOR 104-Duties of Train and Engine Crew Members, USOR 1000-Mandatory Directives, USOR 1001-All Employees Issuing, Copying, and Repeating Instructions, USOR 1003-Track Authority.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

The Claimant appeared before this Board and was afforded the unlimited opportunity to address these matters without examination. The Claimant also stated that the Organization had adequately represented him throughout this matter.

On 10-26-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's U.S. Operating Rule C, Rule 104, Rule 1000, Rule 1001, and Rule 1003, to which the Organization and Claimant hereby appeal.

CARRIER POSITION: The Claimant, while working as Engineer on Job A41971-09 on 10-9-18 at Milepost 415.3 on the Baton Rouge Subdivision; surrendered his train's main track authority while 3,700' of his train (60 rail cars) was still occupying the main track.

The Conductor contacted and communicated with RTC via radio in the presence of the Claimant who is responsible for monitoring all such communications. The Claimant was aware of the new track authority granted and that his Conductor made the entry into the PTC system, thereby cancelling their

current track authority while still occupying it. This caused Claimant's train to go into emergency brake application, stopping the train.

The Claimant acknowledged the new authority from his Conductor and blindly accepted it without verifying his train was clear of the old authority. This created a potential catastrophe whereby another train could have entered the track Claimant's train was occupying.

The Claimant's negligence was evident by his admission that he turned the radio volume down to not be disturbed.

The Claimant bears equal responsibility with the Conductor for this gross negligence and dangerous failure. The Claimant allowed his Conductor to transmit inaccurate location information to the RTC and took no action to correct the misinformation.

The Claimant's conduct is a Level 3 violation, which subjects the Claimant to possible de-certification pursuant to FRA regulations and possible dismissal. Occupying main track without authority is a de-certifiable event requiring a minimum 30-day suspension for a first violation. The incident represents the Claimant's second Level 3 violation within 2 months.

Accordingly, dismissal is the appropriate discipline.

ORGANIZATION POSITION: The Claimant was very attentive to operating the train while approaching a siding when his Conductor (Cole) took a call from RTC and prematurely accepted a new track authority.

The Conductor then instructed the Claimant to accept the track authority in the CDU program in the PTC system. In compliance with his Conductor, the Claimant pushed the "accept" prompt.

The Claimant is only guilty of relying upon his Conductor with 13 years of experience. The Conductor signed a waiver and accepted full responsibility for the incident and the Rule 1003 Track Authority violation.

The RTC should have also been a part of this investigation. The RTC failed to ascertain the train's location when assigning a new track authority. The RTC unilaterally assumed the train was beyond the limits of the old authority, which is quite evident from the conversation transcribed between the RTC and the Conductor.

The Claimant did not violate Rule C, as this incident did not involve an injury.

The evidence does not conclude the Claimant violated Rule 104, as the Claimant performed all of his Engineer duties properly on the date in question.

The Claimant has served the Carrier for 18 years as Brakeman, Conductor, Trainmaster, and including the last 11 years as Engineer. The Claimant's loyal tenure along with the facts of this case mitigate in favor of sustaining this claim and the reinstatement of the Claimant.

The Organization asserts for the reasons argued, the claim should be sustained.

AWARD: The evidence does not prove a violation of Rule C or Rule 104 or Rule 1001 by the Claimant. The Claimant acted under the directive of his Conductor when he accepted the new track authority in the CDU, following the Conductor's dialogue with the Rail Traffic Controller.

The Claimant's error in acting on the Conductor's directive and approving the new track authority while the rear of his train had not yet exited the prior track

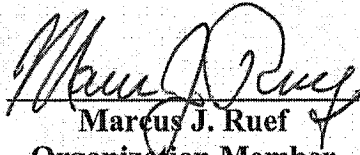
approval, is demonstrably mitigated by the Conductor's directive to him. An Engineer must rely upon the directives of his Conductor in large measure even when required to independently verify. The Claimant's 18 years of service to the Carrier further mitigate the termination placed on him.

The parties' collective bargaining relationship places limitations upon the Carrier's right to discipline, notwithstanding the Carrier's unilaterally created Discipline Policy. The tenants of just cause include the axiom that discipline be fair and consistent, as stated in the Carrier's Discipline Policy. Within the application of discipline analysis under collective bargaining agreements, discipline may be reduced to more appropriately remedy the matter. Such is the case before the Board in the instant claim.

Accordingly, the claim is sustained in part. The Claimant is reinstated without backpay.



Sidney Moreland
Arbitrator/Neutral Member



May 17, 2018

Marcus J. Ruef
Organization Member

John K. Ingoldsby
Carrier Member

Heard 5-10-18

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Versus

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Omar Boone

Case #257

Award #257

CARRIER FILE: IC-BLET-2018-00138

STATEMENT OF CLAIM: Claim of CN/IC Conductor/Engineer Omar Boone for the unwarranted discipline of 5 days Actual Suspension from service (November 6, 2018 through November 10, 2018) assessed to Engineer Boone. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR I-Duty-Reporting of Absence.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 10-30-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's U.S. Operating Rules, Rule I, to which the Organization and Claimant hereby appeal.

CN U.S. Operating Rule I states:

"I. DUTY-REPORTING OR ABSENCE

Employees must report for duty at the designated time and place with the necessary equipment ready to perform their duties. Employees subject to call must provide necessary contact information to those required to call them and be available to accept the call.

Employees must not engage in other business, be absent, allow others to fill their assignment, or exchange duties with others, unless authorized to do so.

Employees must immediately give change of address and telephone number to their supervisor and those required to call them to duty. Employees must call for their mail regularly and answer correspondence promptly.

Employees are required to work regularly and without excessive layoffs or absences. An employee who is permitted to lay off is expected to mark up promptly within 24 hours or less of the mark-off time, unless the employee requests and receives permission to be off for a specific period of time longer than 24 hours."

CARRIER POSITION: The Claimant had 3 unexcused absences on 7-21-18; 8-18-18 and on 10-11-18 all within the preceding 12-week period.

The Claimant has a duty to work regularly and if he needed time off to attend to issues he must make use of other authorized leave, including a leave of absence, contractually authorized leave or FMLA Leave. Claimant failed to utilize any of these options and was found in violation of the rule cited.

The Claimant's unexcused absences exceed the Attendance Guidelines threshold for being excessively absent.

The evidence substantially proves the Claimant's actions resulted in a violation of the Attendance Guidelines and USOR General Rule I, governing reporting for duty and absenteeism.

ORGANIZATION POSITION: The Organization contends that 3 non-contractual days off for sickness in a 12-week period is simply not excessive.

The Claimant's 10-11-18 absence barely falls into the 12-week period. This absence was extraordinary and necessitous. The Claimant's home's basement was flooded with sewage water while his wife and children were occupying the main floor. This emergency required the Claimant to miss work to remove the hazard from his home, and the Claimant marked off with the proper authority and the Carrier's Attendance Maintenance Center ("AMC") who approved the mark off. The Claimant was not informed that the mark off would be in violation of the attendance guidelines. Under the language of System Bulletin Notice #3 (Attendance Guidelines) the Claimant reasonably believed this mark off was not unexcused and/or not a violation for which subsequent discipline would be assessed.

The Organization asserts that for the reasons stated, the claim should be sustained.

AWARD: The claim is denied.

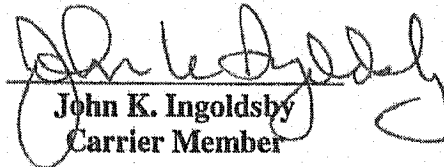


Sidney Moreland
Arbitrator/Neutral Member



May 17, 2019

Marcus J. Ruef
Organization Member



John K. Ingoldsby
Carrier Member

16 MAY 2019

Heard 5-10-18

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Case #258

Versus

Award #258

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Theodore Phipps

CARRIER FILE: IC-BLET-2018-00139

STATEMENT OF CLAIM: Claim of CN/IC Engineer Theodore Phipps for the unwarranted discipline of 45 days Actual Suspension from service (October 1, 2018 through November 14, 2018) assessed to Engineer Phipps. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR 529-Activation Failure and USOR 104-Duties of Train and Engine Crew Members.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 10-16-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's U.S. Operating Rule 529 and Rule 104, to which the Organization and Claimant hereby appeal.

CARRIER POSITION: The Claimant, while working as Engineer on Job RM33571-29 on 9-30-18 at Milepost 31.4 on a Main Track on the Chicago Subdivision; entered a crossing without proper protection.

The Carrier issued a 529A activation failure restriction at the crossing in question, requiring the Claimant to stop his train before entering the crossing. The Claimant admittedly did not stop his train at the crossing.

The Claimant's conduct is a Level 3 violation, which subjects the Claimant to possible de-certification pursuant to FRA regulations and possible dismissal. The Claimant also has an active attendance violation on his record.

Accordingly, 45-day suspension is the appropriate discipline.

ORGANIZATION POSITION: The Claimant was denied a fair and impartial hearing when the Carrier refused the Organization's request for a short recess in order to confer with the Claimant.

The Claimant's crew member (Trainee Harwig) was not presented at the investigative hearing, despite the Carrier charging a violation of Rule 104, which is uniformly applicable to *all* crew members.

The Claimant was slowing the train with all intentions of stopping before the crossing, as evidenced by at least three different conversations amongst the crew concerning the 529A.

The Claimant had the dynamic brake on traveling at 3-4 MPH at least 1,000' before the crossing. Concerned that the train was stopping too quickly, the Claimant eased off the dynamic brake causing slack in the train. When the Claimant re-applied the brakes, the slack of the 11,916 ton train ran in on him and shoved the train into the crossing by 12'.

The evidence does not conclude the Claimant violated Rule 104, as the Claimant performed all of his Engineer duties properly on the date in question and the crew had multiple briefings about the 529A.

The Organization asserts for the reasons argued, the claim should be sustained.

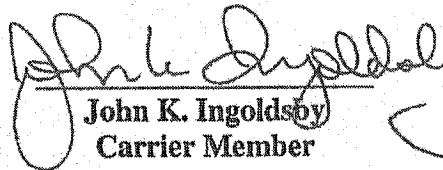
AWARD: The claim is denied. The Claimant's Level 3 violation with an active attendance discipline subjects the Claimant to a 45-day suspension in accordance with the Discipline Policy Matrix.



Sidney Moreland
Arbitrator/Neutral Member

 May 17, 2019

Marcus J. Ruef
Organization Member



John K. Ingoldsby
Carrier Member

16 May 2019

Heard 5-10-18

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (Carrier)
Versus

Case #259
Award #259

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant Joseph Vascik, Jr.

CARRIER FILE: IC-BLET-2019-00001

STATEMENT OF CLAIM: Claim of CN/IC Engineer Joseph Vascik, Jr. for the unwarranted discipline of 30 days Actual Suspension from service (November 9, 2018 through December 8, 2018) assessed to Engineer Vascik. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR 1000-Mandatory Directives and USOR 1004-Joint Mandatory Directives.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 11-26-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's U.S. Operating Rule 1000 and Rule 1004, to which the Organization and Claimant hereby appeal.

CARRIER POSITION: The Claimant, while working as Engineer on Job L55391-08 on 11-8-18 at Milepost 81.1 on the Gillman Subdivision; entered a section of Main Track which was under Joint Authority with another Carrier employee (Chad Panky), without first obtaining permission from said other employee.

The Claimant's Conductor spoke with a different employee (Jason Panky) who had verbal authority to work in the yard area. However, there was never any communication with Chad Panky, the employee sharing joint authority with the Claimant's train.

The Claimant and his Conductor were negligent in failing to clarify whether or not they had permission to enter the joint authority track. The Claimant also failed to properly initial, sign, and date his track authority.

The Claimant's conduct is a Level 3 violation, which subjects the Claimant to possible de-certification pursuant to FRA regulations and possible dismissal. Occupying track without authority is a de-certifiable event requiring a minimum 30-day suspension for a first violation.

Accordingly, the 30-day suspension is the appropriate discipline.

ORGANIZATION POSITION: The Claimant was charged with a rule not cited in the notice of investigation. The Carrier's notice alleged the Claimant occupied main track without authority, yet the Carrier also charged the Claimant with Rule 1000 governing mandatory directives.

The Claimant did not mention the Claimant's failure to initial his TGBO within 10 days of the incident, yet Rule 1000 was allowed despite objections by the Organization.

The Claimant was further denied a fair and impartial hearing by the Carrier's failure to produce the Conductor (Gasparas) who was listed in the charge letters as a charged employee along with Claimant. The Conductor had the only first hand knowledge of the incident and bore responsibility as Conductor.

Conductor Gasparas signed a waiver and accepted responsibility for this incident, although the Carrier failed to inform the Organization who was prepared to question the Conductor.

This incident was beyond Claimant's control. The Conductor received the track information from RTC and relayed it to Claimant. The Conductor then left the locomotive to speak to the employee in charge. The Conductor returned to the locomotive and informed Claimant that he had spoken with the employee in charge and had received permission to enter the limits. The Claimant proceeded based upon the representations made by the Conductor.

The Organization asserts for the reasons argued, the claim should be sustained.

AWARD: Although the evidence reflects the Claimant did not violate Rule 1004, his violation of Rule 1000 is still a de-certifiable event and therefore a Level 3 subject to a 30-day suspension. The claim is denied.

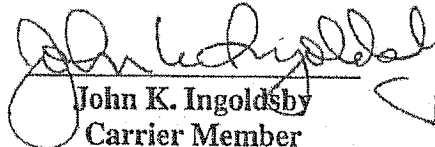


Sidney Moreland
Arbitrator/Neutral Member



May 17, 2019

Marcus J. Ruef
Organization Member



John K. Ingoldsby
Carrier Member

16 MAY 2019

Heard 5-10-18

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (Carrier)

Versus

Brotherhood of Locomotive
Engineers & Trainmen (Organization)
and Claimant Matthew Wright

Case #260

Award #260

CARRIER FILE: IC-BLET-2019-00004

STATEMENT OF CLAIM: Claim of CN/IC Engineer Matthew Wright for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on December 27, 2018. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of the Company Code of Conduct and USOR Rule H.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

The Claimant appeared before this Board and was afforded the unlimited opportunity to address these matters without examination. The Claimant also stated that the Organization had adequately represented him throughout this matter.

On 1-7-19, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's U.S. Operating Rules, Rule H, to which the Organization and Claimant hereby appeal.

U.S. Operating Rule H states:

"H. FURNISHING INFORMATION AND CONDUCT.

Dishonesty, disloyalty, insubordination, willful neglect, gross carelessness, desertion from duty, making false reports or statements, concealing facts concerning matters under investigation, immoral conduct, including but not limited to conduct of any employee leading to the conviction of any felony, and serious violations of the law are prohibited. Employees must not be quarrelsome, vicious or enter into disputes,

arguments, or fights with any person, regardless of provocation. Any incidents are to be reported to the proper authority.

As a CN employee, you are expected to be familiar with, read and be governed by the Company's Code of Business Conduct and policies, and understand how they apply to you and your job. Company policies are accessible on CN's electronic portal (ePortal) in the Employee Self-Service section under Policies and Guidelines.

Any employee convicted of a felony or other serious violation of the law must notify their supervisor no later than the end of the first day immediately following the day the employee received notice of the conviction.

Employees must not withhold information, or fail to provide all the facts to those authorized to receive information regarding accidents, injuries, rule violations, breaches of company security, or unusual events. This duty to furnish information includes but is not limited to accident and injury reports, recorded statements, full cooperation in injury investigations, and safety rules violations. Employees must also take all reasonable measures to protect and preserve evidence where it is within their control and ability to do so."

CARRIER POSITION: The Claimant, while working as Supervisor of Locomotive Engineers (SLE); engaged in a pattern of misuse of Carrier assets and committed numerous and serious violations of the Carrier's Code of Business Conduct, including utilizing the Carrier's vehicle, credit card, computer, and cell phone for personal gain.

The Claimant asserted he was unable to work and/or safely drive and procured a medical leave of absence from 10-28-16 through 4-27-17. Despite his medical claims, Claimant drove the Carrier vehicle over 4,300 miles, with fuel purchased by the Carrier. The evidence reflects the Claimant was using the Carrier resources to operate his own gravel business.

The Claimant also used the Carrier's cell phone, computer, and email system to conduct his personal business, including his engagement with adult services and transmitting pornographic images.

The Claimant was removed from his SLE position on 10-5-18, and became an Engineer for the Carrier by exercising his right to mark back up as an Engineer.

The Carrier first obtained information of the Claimant's dishonest activities as SLE in August 2018 and began an internal audit to ascertain whether or not the accusations were truthful.

The audit was completed on 11-9-18, verifying the accusations, and the Claimant was noticed for investigation 3 days later on 11-12-18; well within the 10-day limit prescribed by agreement and the 15-day limit when the Carrier first possessed sufficient knowledge.

The Claimant's immoral conduct, making false reports, and dishonesty are proven violations of Rule H, warranting his dismissal.

ORGANIZATION POSITION: The Claimant was denied his Article 29 B contractual right to a fair and impartial investigation and disciplinary process by the Carrier adding witness Condon in a postponement letter. A third postponement letter was sent removing Albritton and adding Van Winkle as witnesses.

The Claimant has worked for the Carrier since 2008. His work record of 10 years contains no notations or blemishes, which is extraordinary.

All of the allegations involve events that occurred from 10-1-16 through 11-30-18, when the Claimant was an at-will employee in Carrier management.

The Carrier waited too long to charge the employee in violation of the parties collective bargaining agreement mandating the Claimant be apprised of the charges against him within 10 days from the date of the incident and that investigations will be held within 15 days from the day the Carrier has sufficient knowledge of the incident(s).

The Carrier removed their car, phone, and computer from the Claimant in June 2017. The Organization asserts that this reflects the Carrier's knowledge of the allegations.

On 8-27-18, the Carrier received an anonymous email alleging the charges against the Claimant and began investigating the accusations. The Organization asserts that this also reflects a second incident whereby the Carrier had knowledge of the Claimant's conduct.

The Claimant was allowed to exercise his right to mark back up as an Engineer (Unionized employee), which should prevent him from facing an investigation as a unionized employee for matters occurring prior to his unionization.

None of the allegations occurred while the Claimant was a unionized employee. Accordingly, no discipline of him as a unionized employee should stand.

Furthermore, none of the allegations reflect matters that interfered with the Carrier's business since the Claimant was on FMLA medical leave of absence when the incidents allegedly occurred.

For the reasons stated in the Organization's appeal and submissions, the claim should be sustained and the Claimant reinstated into his Engineer position.

AWARD: The claim is denied. Upon receipt of unsubstantiated information concerning the Claimant's improper use of Carrier property; the Carrier responsibly undertook an audit, which revealed substantial evidence of the Claimant's violation of Rule H. The Carrier's delay in charging the Claimant on 11-12-18 only after obtaining "sufficient knowledge" from the final audit on 11-9-18 meets the 15-day sufficient knowledge standard of Article 29 D of the Agreement between the parties.

Whether or not the Claimant was entitled to an investigation for conduct occurring while in a management role, as an at-will employee is a moot point. The Claimant's termination in accordance with collective bargaining rights afforded the Claimant additional rights not granted at-will employees. Accordingly, the Claimant's due process protest is without merit.



Sidney Moreland
Arbitrator/Neutral Member

Marcus J. Ruef May 17, 2019
Marcus J. Ruef
Organization Member

John K. Ingoldby 16 MAY 2019
John K. Ingoldby
Carrier Member

Heard 5-10-19

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (Carrier)

Versus

Brotherhood of Locomotive
Engineers & Trainmen (Organization)
and Claimant Samuel Utroska

Case #261
Award #261

CARRIER FILE: IC-BLET-2019-00005

STATEMENT OF CLAIM: Claim of CN/IC Engineer Samuel Utroska for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on January 21, 2019. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare Benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of USOR I-Duty-Reporting or Absence.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

The Claimant appeared before this Board and was afforded the unlimited opportunity to address these matters without examination. The Claimant also stated that the Organization had adequately represented him throughout this matter.

On 1-7-19, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's U.S. Operating Rules, Rule I, to which the Organization and Claimant hereby appeal.

CN U.S. Operating Rule I states:

"I. DUTY-REPORTING OR ABSENCE

Employees must report for duty at the designated time and place with the necessary equipment ready to perform their duties. Employees subject to call must provide necessary contact information to those required to call them and be available to accept the call.

Employees must not engage in other business, be absent, allow others to fill their assignment, or exchange duties with others, unless authorized to do so.

Employees must immediately give change of address and telephone number to their supervisor and those required to call them to duty. Employees must call for their mail regularly and answer correspondence promptly.

Employees are required to work regularly and without excessive layoffs or absences. An employee who is permitted to lay off is expected to mark up promptly within 24 hours or less of the mark-off time, unless the employee requests and receives permission to be off for a specific period of time longer than 24 hours."

CARRIER POSITION: The Claimant was called 3 times for job assignment R99671-28 on 12-28-18 and did not answer the call to service. The Carrier, utilizing only phone numbers provided by Claimant, telephoned him for work at 0404 hours; 0406 hours; and at 0410 hours.

The Claimant's refusal to answer the call to work resulted in another Engineer having to take the assignment.

The Claimant finally contacted the Carrier 3 hours later after the assignment had begun.

There is no dispute that the Claimant did not answer the call from the Carrier.

The Claimant's proven violation of Rule I is a Level 2 violation. The Claimant has 2 prior Level 2 violations for missed calls for service in violation of Rule I. In one such instance, the Claimant missed 2 calls, but the matter was treated as a single instance. It is clear the Claimant has not endeavored to improve his performance and adhere to the rules requiring answering calls to service.

The evidence substantially proves the Claimant's actions resulted in a violation of the Attendance Guidelines and USOR General Rule I, governing reporting for duty and absenteeism.

ORGANIZATION POSITION: The Carrier called the Claimant twice. The third call was to an incorrect number. The Claimant returned the call when he received the message.

The Claimant was forthright and honest about his Rule I violation.

The Carrier's non-negotiated discipline policy is confusing to all parties and the Carrier failed to offer it into evidence. The Organization contends the new policy mandated that all employees were given a clean slate. The Carrier contends the Claimant has 2 prior absence disciplines, both of which were waived by the Claimant. According to the Carrier's policy on absenteeism, the Claimant should have been issued a Level 1 violation only.

The Organization also avers that the dismissal of the Claimant for the minor delay in returning the Carrier's call to service is harsh and excessive.

The Organization asserts that for the reasons stated in the appeal and submission, the claim should be sustained.

AWARD: The Carrier asserts the Claimant's missed call, clearly a violation of the Attendance Guidelines and Rule I, is a Level 2 violation of the Carrier's Discipline Policy. Said Discipline Policy describes Level 2 violations as "*serious and/or has the potential to result in an accident or incident, damage equipment, or cause injury and does not meet otherwise the criteria for a Level 3 or Level 4 Rule violation.*" As a matter of logic, Attendance Guideline and/or Rule I violations, whereby the result is the employee not working at all; cannot possibly meet the criteria described in the Carrier's Level 2 definition. The dismissal at hand, predicated upon the Carrier's erroneous interpretation and assessment of the Claimant's disciplinary record, requires Board correction.

The Carrier clearly separates violations as either attendance or discipline for purposes of assessing discipline pursuant to the language of the Attendance Guidelines and the Discipline Policy. The Carrier further confuses the matter by alleging the single incident of the missed call in question is a violation of both the Attendance Guidelines and Operating Rule I. However, it is noted the Carrier cited only the Attendance Policy and placed it into evidence at the hearing.

Although an Attendance Guideline violation may subsequently affect an assessed Level 1, 2, or 3 discipline in accordance with the Discipline Policy's Matrix, Appendix B; the Carrier must correctly classify an employee's work record when doing so.

The Claimant's record shows a violation of Rule I on 11-4-18 and 11-14-18 as the only 2 applicable disciplines preceding the missed call now at issue, both of which the Carrier incorrectly classifies as Level 2.

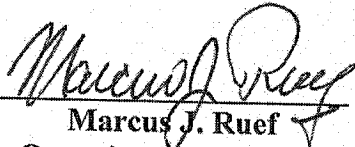
After a careful reading of Rule I and the Discipline Policy, the Board finds that a Rule I violation does not meet the Carrier's definition of a Level 2 violation. More subjectively, the facts of this case (missed call) also fail to meet the Carrier's definition of a Level 2 violation. Accordingly, the incident at hand represents the Claimant's third Level 1 discipline subject to the Carrier's corresponding penalty in the Discipline Matrix, which states:

How Many Past <u>Level 1 Rule</u> Violations in the Last Three Years?				
None	One	Two	Three	Four
Consequence is:	Discipline is:	Discipline is:	Discipline is:	Discipline is:
<i>Letter of Caution</i>	<i>Letter of Reprimand</i>	<i>15-day Suspension</i>	<i>30-day Suspension</i>	<i>Discharge</i>

The claim is sustained in part. The dismissal of the Claimant is converted to a 15-day suspension.



Sidney Moreland
Arbitrator/Neutral Member



May 17, 2019
Marcus J. Ruef
Organization Member

John K. Ingoldsby
Carrier Member

Heard 5-10-18

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (Carrier)
Versus

Case #262
Award #262

Brotherhood of Locomotive
Engineers & Trainmen (Organization)
and Claimant Bobby Donoho

CARRIER FILE: IC-BLET-2019-00009

STATEMENT OF CLAIM: Claim of CN/IC Engineer Bobby Donoho for the unwarranted discipline of 15 days Actual Suspension from service (February 2, 2019 through February 16, 2019) assessed to Engineer Donoho. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR 702-Main Track Switches and USOR 703-Releasing Authority in Non-Signaled Territory.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 1-25-19, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's U.S. Operating Rule 702 and Rule 703, to which the Organization and Claimant hereby appeal.

CARRIER POSITION: The Claimant, while working as Engineer in Centralia, Illinois on Job L58891-08 on 1-9-19; left a Main Line switch open after releasing his Track Authority 114-9 to the BNSF RTC Dispatcher.

The Claimant was required to ensure the switches were lined for the Main Line once his train passed over the switch in accordance with Rule 702 and Rule 703. The Claimant failed to do so.

The Claimant also failed to engage in a job briefing with his Conductor and/or make any effort whatsoever to prevent the Conductor from releasing their track authority.

The Claimant's conduct is a proven violation of Rule 702 and Rule 703, which is a Level 2 violation under the Carrier's Discipline Policy. The 15-day suspension is an appropriate level of discipline for the Level 2 violations in this matter.

Accordingly, the claim should be denied.

ORGANIZATION POSITION: The Claimant had no opportunity to prevent the Conductor (Enriquez) from releasing their track authority. The Claimant and his Conductor were on a BNSF Railroad Line waiting for trains to clear when the BNSF Dispatcher requested the Conductor release their track authority in order for

an NS train to pass through. The Conductor, who was not in the locomotive with the Claimant, released their track authority without even speaking to the Claimant Engineer.

Nevertheless, the Claimant took every possible measure to correct his Conductor's error. The Claimant attempted to contact the BNSF Dispatcher without success. The Claimant then contacted the NS train and informed them about the switches.

The Conductor signed a waiver and accepted responsibility for the incident, however the Carrier failed to inform the Organization and did not present the Conductor for questioning during the investigative hearing. The Conductor, as the responsible employee, had first hand knowledge of this incident and the Organization and Claimant were deprived of a fair and impartial hearing by the Carrier's failure to disclose the Conductor's waiver and make him available.

Since the Claimant and his train were on BNSF Railroad property, the Carrier's USOR Rules cannot apply for discipline. GCOR Rules apply to BNSF property.

The Claimant should be commended for his diligent efforts to correct his Conductor's egregious error. Instead, the Carrier has harshly and excessively disciplined him without justification.

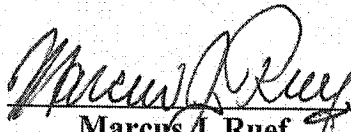
The Organization asserts for the reasons argued, the claim should be sustained.

AWARD: The claim is sustained. The Claimant had no part whatsoever in the violation of Rule 702 or Rule 703. The Claimant's Conductor unilaterally undertook to report to the BNSF RTC concerning the release of track authority as mandated by Rule 703 and the necessity of lining the Main Track switch to the "normal" position as mandated by Rule 702.

After the Claimant realized his Conductor's error, he immediately took corrective action by attempting to contact the RTC himself and ultimately reaching the BNSF train by radio to avoid a mishap. The Claimant's conduct is commendable and his discipline for it is wholly unfounded.



Sidney Moreland
Arbitrator/Neutral Member



Marcus J. Ruef
Organization Member

May 17, 2019

John K. Ingoldsby
Carrier Member

Heard 5-10-18