

AWARD NO. 2
Case No. 2

Organization File No.
Carrier File No. IC-11-107-6

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer L. R. Danenhower for removal of 20 days deferred suspension including payment of one (1) day attending the investigation with all notations of discipline expunged from his personal work record and compensation for all time lost, including the time for attending the investigation pertaining to the alleged violation of CN U.S. Operating Rule 501.

FINDINGS:

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

On September 15, 2005 Claimant was assigned as engineer on Train L55191-15, having come on duty at 4:30 pm. On that date, Supervisor Locomotive Engineers Kevin Brockman was asked to conduct an efficiency test on Claimant's train to determine its operating speed. At 7:37 pm, while parked in a grain elevator parking lot at Savoy, Brockman radared the train as it passed his location. According to the radar, the train was operating at 42 miles per hour. The following

morning, Brockman verified this reading against the event recorder on the engine and determined that the reading was accurate. The track speed in that territory is 60 miles per hour.

Claimant was consequently directed to attend a formal investigation at which he was charged with failing to maintain the maximum speed to the extent possible, consistent with safety and efficiency. Following the investigation, Claimant was assessed a twenty day deferred suspension.

The Carrier concluded that Claimant was in violation of Rule 501 - Speed, which reads, in part, as follows:

Speeds indicated are maximum authorized speeds between locations named, but do not modify any rule or instruction that may require a lower speed. Maximum speed must be maintained to the extent possible, consistent with safety and efficiency. Conductors and engineers are responsible for knowing and not exceeding maximum speed for their train or territory. Unnecessary delays must be avoided.

* * *

Crew members must notify the Rail Traffic Controller promptly of any condition that will delay or prevent their train from making the usual speed. When a controlled signal displays a proceed indication, notify the control operator immediately if movement cannot occur promptly.

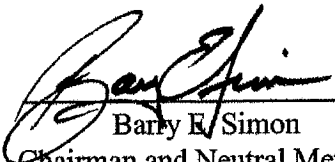
According to Claimant, it was necessary to operate at the slower speed because the engine was having truck hunting problems. He explained:

The trucks were banging so bad on them that you couldn't sit. They were -- anything over 50 miles an hour or 45 to 50, you could not -- it was a dangerous situation. I personally just rectified the fact by notching them off. As long as you ran them between 40, 45, they set out and you could get the job done. That's, that's what I did.


He acknowledged that he did not notify anyone that he could not maintain the track speed, but pointed out that he completed his work in time without encountering delays. There is no evidence in the record that Claimant's train was, in fact, delayed by his operating at the lower speed. The evidence of record further supports the conclusion that Claimant operated the train at the

maximum speed consistent with safety because of the engine condition. The Board finds, therefore, that the Carrier has failed to provide substantial evidence to support the issuance of discipline. The discipline must be overturned.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.


Barry E. Simon
Chairman and Neutral Member

Richard K. Radek
Employee Member


Timothy E. Rice
Carrier Member

Dated: August 25, 2001
Arlington Heights, Illinois

AWARD NO. 3
Case No. 3

Organization File No.
Carrier File No. IC-111-106-5

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer F. A. Herndon for removal of 30 days deferred suspension including payment of one (1) day attending the investigation with all notations of discipline expunged from his personal work record and compensation for all time lost, including the time for attending the investigation pertaining to the alleged violation of CN U.S. General Rule A; C; Life U. S. Safety Rule Book Rules Safety Vision and Section II, Core Safety Rules, Rights and Responsibilities.

FINDINGS:


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

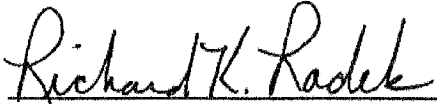
While working as engineer on Train R92671 on July 25, 2005, Claimant sustained a personal injury. At approximately 10:00 am, Claimant's conductor was on the ground lining switches. As he was waiting for the conductor to return to the engine, Claimant descended the engine stairs to the bathroom. In doing so, he slipped and sustained an injury.


Claimant was subsequently directed to attend a formal investigation at which he was charged with sustaining a personal injury. Following the investigation, Claimant was assessed a thirty day deferred suspension.

The Board has reviewed the record of the investigation and finds that there is not substantial evidence to support the Carrier's conclusion that Claimant failed to work in a safe manner. The mere fact that he sustained a personal injury is not sufficient to reach such a conclusion. The burden is upon the Carrier to establish a rule violation occurred. The discipline, therefore, must be rescinded.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.


Barry E. Simon
Chairman and Neutral Member


Richard K. Radek
Employee Member


Timothy E. Rice
Carrier Member

Dated: August 25, 2008
Arlington Heights, Illinois

AWARD NO. 4
Case No. 4

Organization File No.
Carrier File No. IC-111-107-48

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer S. T. Wakefield for the removal of sixty (60) days suspension – assessed on March 27, 2007 – consisting of thirty (30) days suspension for the alleged violation of Canadian National/Illinois Central U. S. Operating Department Rules 816 and 850 and thirty (30) days suspension in accordance with FRA 49 CFR Part 250 as a result of 240.117(e)[1] in connection with allegedly passing red stop signal indication that requires complete stop before passing it and allegedly running through the power switch at South Gwin, MS and alleged damages sustained on same at approximately 0750 hours on Monday, March 5, 2007 while working as Engineer on G 88671-03, with all notations of discipline assessed expunged from his personal work record and compensation for all time lost, including the loss of earnings due to attending the investigation.

FINDINGS:

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

The essential facts in this case are not in dispute. On March 5, 2007 Claimant was the engineer on Train G 88691-03, a loaded 108 car grain train. At the approach to Gwin, Claimant had

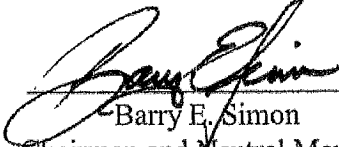
a clear signal, and he had an approach signal at North Gwin. Claimant and his conductor both called this signal and Claimant began to make a brake reduction. The signal at South Gwin was red, but Claimant could tell that he would be unable to stop his train in advance of the signal. Consequently, he made an emergency brake application. Still, the train passed the signal and ran through the power switch at South Gwin by the distance of two locomotives and eight cars.


As a result of this incident, Claimant was directed to attend a formal investigation at which he was charged with failing to control his train. Following the investigation, Claimant's engineer certification was revoked for a period of thirty days and he was suspended for an additional period of thirty days.

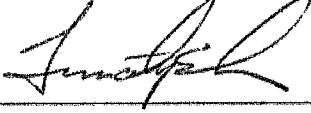
Our review of the record of the investigation establishes that there was substantial evidence to support the Carrier's charge against Claimant. We do not find it unreasonable for the Carrier to have concluded that this incident was the result of Claimant's failure to properly gauge the stopping distance of his train. According to the event recorder download, Claimant's train was running at 52 miles per hour as it passed North Gwin, although Claimant testified he was going 40 mph. Given the speed of his train, he apparently failed to make sufficient brake applications to prevent the train from passing the red signal. Thus, we find he was properly disciplined for failing to control his train.

Under the circumstances, we do not find the discipline assessed to be excessive. In reaching this conclusion, we have considered the various objections raised by the Organization and find them to be without merit.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Richard K. Radek
Employee Member


Timothy E. Rice
Carrier Member

Dated: October 27, 2008
Arlington Heights, Illinois

AWARD NO. 5
Case No. 5

Organization File No.
Carrier File No. IC-111-107-83

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer S. T. Wakefield for reinstatement to the service of IC with seniority unimpaired, all notations in connection with this discipline be removed from his personal work record and that he be compensated for all time lost from the date he was dismissed (September 28, 2007) plus time for attending the investigation until the date he resumes service, including costs for health and welfare and restoration of all vacation entitlements as a result of same, plus loss of earnings due to attending the investigation, and take the necessary steps to contact the FRA and rescind the revocation of the Claimant's Locomotive Engineer Certification License under CFR Part 240.307 for the alleged violation of CN/IC U.S. Operating Rules 1000, 1001, 1003, General Rules C and H in connection with allegedly exceeding limits of Track Warrant Authority at MP 668, on the Grenada Subdivision at approximately 1155 hours, Tuesday, September 11, 2007, while working as Engineer on assignment E29471-11.

FINDINGS:

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

On September 11, 2007 Claimant was assigned as the engineer on Train E 29471-11. At approximately 1051, Claimant was issued a track warrant by the Rail Traffic Controller giving him

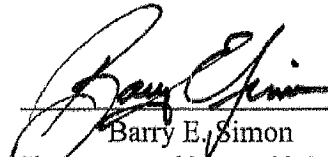
authority to operate on the main track from Winona to Mile Post 668 on the Grenada Subdivision. At approximately 1205 it was determined that Claimant's train was at Mile Post 677, nine miles beyond the limits of the track warrant. Claimant was immediately told to stop his train. He was then removed from service.


Claimant was consequently directed to attend a formal investigation at which he was charged with exceeding the limits of his track warrant authority. Following the investigation, Claimant was dismissed from service.


The record of the investigation shows that another track warrant had been given to a Track Foreman to enable him to work on a switch at Mile Post 675. Additionally, a Signal Maintainer had a track warrant authorizing him to perform work between Mile Posts 668 and 675. After Claimant's train was stopped, it was determined that he and his conductor had copied the track warrant noting Mile Post 688 instead of 668. A transcript of the conversation between the Rail Traffic Controller and the crew showed that they were told Mile Post 668 and read back the track warrant with that number. When he testified at the investigation, Claimant variously stated that he had heard the track warrant being issued, that he could not hear the track warrant and that he was not paying attention.

We find that there was substantial evidence in the record to support the Carrier's conclusion that Claimant bore responsibility for his train exceeding the limits of the track warrant authority. With a Track Foreman and a Signal Maintainer both working in the territory, the consequences of his negligence could have been fatal. In light of Claimant's prior record, which shows an indifference to his duties as a locomotive engineer, we find no basis for modifying the discipline imposed in this case.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Richard K. Radek
Employee Member


Timothy E. Rice
Carrier Member

Dated: October 27, 2008
Arlington Heights, Illinois

AWARD NO. 6
Case No. 6

Organization File No.
Carrier File No. IC-111-107-57

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer D. K. Lamar for reinstatement to the service of Illinois Central Railroad with all seniority rights unimpaired, all notations in connection with this discipline be removed from his personal work record and that he be compensated for all time lost from the time he was removed from service until the date he resumes service, including costs for health and welfare and restoration of all vacation entitlements as a result of same, plus loss of earnings due to attending the investigation account violation of CN U.S. Operating Rule 1000; CN Central Division Timetable No. 3 Fulton Subdivision, Joint Operation of Main Track, Leewood to Aulon; CSX Rule 44-A; CSX Rule 89, paragraphs 1 and 2, in connection with allegedly occupying CSX main track between MP 371.3 and MP 373.4 without authority at or about 1700 hours on April 29, 2007 while working as Engineer on assignment G84571-28.

FINDINGS:

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

On April 29, 2007 Claimant was assigned as engineer on Train G84571-28 working with Conductor B. R. Evans. Prior to departing, Conductor Evans received all of the paperwork for their

trip and gave Claimant his copies. Once on the engine, however, Claimant could not find his copies and the two agreed to work from the conductor's paperwork. At approximately 1700 Claimant's train entered territory on the CSX main track between MP 371.3 and MP 373.4, on which CSX Track Supervisor T. L. Hardison was working. Claimant did not have authority to enter this territory and was told to stop his train. It was then discovered that Claimant did not have his paperwork for the trip and Conductor Evans did not have a copy of the message showing that Hardison had work authority in this territory.

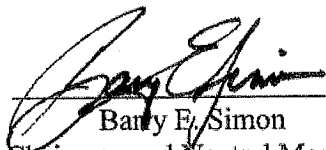
Claimant was removed from service and directed to attend a formal investigation at which he was charged with occupying track without authority. Following the investigation, Claimant was dismissed from service.

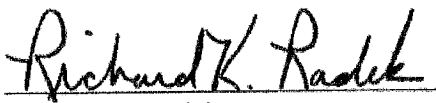
The Board's review of the record of the investigation establishes that there was substantial evidence to support the Carrier's charge against Claimant. Not only did the crew not have the message concerning Hardison's work authority, the work papers they had indicated there were four messages. Without the Hardison message, they only had three. Obviously, they never checked to ensure they had all the necessary documents before starting their trip. Evans testified they "briefly went over" the paperwork in the office. Claimant was negligent in that review of the documents because he should have noticed that there were only three messages instead of four. By leaving the terminal without knowing if they had all of the proper paperwork, Claimant did not know that he was not to enter Hardison's work limits without authority.

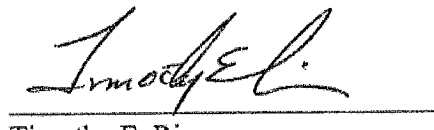
Claimant's record contains several disciplinary entries since his being hired on April 30, 2001. In particular, we note that Claimant had been disciplined for sleeping on duty and crossing

between moving equipment. In July 2005 he received a thirty day suspension for entering a planned work area without authority, the same offense for which he was charged in this case. In June 2006 he was dismissed for failing to perform an initial terminal air test. The Carrier reinstated him on a leniency basis on March 20, 2007 with the admonition that a future incident could result in his dismissal. This incident came barely one month later. It is evident to the Board that Claimant was given a final chance to demonstrate he could be a conscientious employee, but proved that he could not. We have no choice but to uphold the discipline assessed in this case. In reaching this conclusion, we have considered the procedural arguments raised by the Organization and find them to be without merit.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Richard K. Radek
Employee Member


Timothy E. Rice
Carrier Member

Dated: October 27, 2008
Arlington Heights, Illinois

AWARD NO. 7
Case No. 7

Organization File No.
Carrier File No. IC-111-107-75

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer M. Ross for removal of 30 days actual suspension including one (1) day attending the investigation with all notations of discipline expunged from his personal work record and compensation for all time lost, including time for attending the investigation pertaining to the alleged violation of CN U.S. Operating Rule H.

FINDINGS:

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

At all times relevant to this dispute, Claimant was assigned to the Engineer's Guaranteed Extra Board at Memphis, Tennessee. On July 19, 2007, Claimant operated train X29471-19 from Memphis to Jackson, Mississippi, where he tied up for rest. He was scheduled to deadhead back the Memphis the following morning. Before he left the company lodging facility, a motel employee accused him of sexual harassment. The Carrier then investigated this charge and subsequently directed Claimant to attend a formal investigation at which he was charged with conduct that was

immoral and unbecoming of an employee. Following the investigation, Claimant was suspended until he completed the following disciplinary measures:

- Attend sensitivity training with an EFAP counselor.
- Review and sign acknowledgment of receipt and understanding of CN's Code of Business Conduct.
- Review and sign acknowledgment of receipt and understanding of CN's Prohibitive Harassment, Discrimination and Anti-Retaliation Policy.


Claimant's total suspension without pay was thirty days.

A review of the record of the investigation indicates that Claimant, on three separate occasions on July 20, 2007, came up to the motel employee from behind, grabbed her by the waist and pulled her toward his body. These incidents were witnessed by a second motel employee. Claimant did not deny these incidents occurred, but insisted they were merely friendly hugs. In light of this evidence, it is the Board's conclusion that there was substantial evidence to support the Carrier's charge against Claimant.

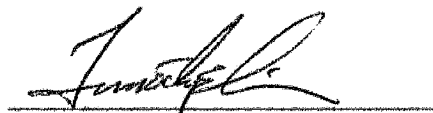
There is no question that Claimant's conduct was inappropriate. As a Carrier employee using Carrier provided lodging, Claimant was subject to the Carrier's rules of conduct. While Claimant may have felt these were just friendly hugs, a reasonable person might conclude otherwise. As far as the motel employee was concerned, this was unwelcome conduct of a sexual nature.

Under the circumstances, we conclude that the discipline imposed by the Carrier was appropriate to the offense. The fact that Claimant was required to undergo sensitivity training during his suspension was relevant to the conduct for which he was disciplined. We find no basis for modifying the discipline imposed. In reaching this conclusion, we have considered the various objections raised by the Organization and find them to be without merit.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Richard K. Radek
Employee Member


Timothy E. Rice
Carrier Member

Dated: October 27, 2008
Arlington Heights, Illinois

AWARD NO. 8
Case No. 8

Organization File No.
Carrier File No. IC-111-107-88

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Michael N. McReynolds for reinstatement to the service of Illinois Central Railroad with all seniority unimpaired, all notations in connection with this discipline be removed from his personal work record and that he be compensated for all time lost from the time he was removed from service until the date he resumes service, including costs for health and welfare and restoration of all vacation entitlements as a result of same, plus loss of earnings due to attending the investigation account alleged violation of CN U.S. Operating General Rule G, his Reinstatement Agreement and the CN Substance and Alcohol Free Environment (SAFE) Policy and Guidelines signed by him on March 15, 2004 when he tested positive for an illegal substance on a follow up drug test on July 14, 2007.

FINDINGS:

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

Following a random drug test on September 27, 2003, on which he tested positive, Claimant was dismissed from the Carrier's service on October 21, 2003. He was returned to service by the Carrier on a leniency basis on April 4, 2004, subject to the following conditions:

I Michael McReynolds, as a condition for being considered for reinstatement to service with the CN, agree to undergo Toxicological Testing upon request of the CN and/or the Employee Assistance Program counselor to determine whether I am using, have used, or have in my urine, breath, and/or blood any substance considered to be in violation of company policy.

I understand that I must provide a negative return to work drug test and am subject to follow up testing, under recommendation from the Substance Abuse Professional (SAP), for up to 5 years.

I understand that the presence of any substance in my blood, breath, or urine, which is considered a violation of company policy, will result in my removal from service and formal disciplinary action. This policy applies to licit as well as illicit drugs, which constitutes a violation of company policy as defined in the Substance and Alcohol Free Environment (S.A.F.E.) Policy and Guidelines.

I understand I must remain substance free for the remainder of my career. I understand that if I refuse to provide a urine and/or breath sample for testing when instructed to do so, I will be subject to dismissal for failing to obey instructions. Tampering with a urine and/or breath sample in any way (i.e. dilution, adulteration, substitution or destruction) shall be deemed a refusal and grounds for termination.

This agreement is in addition to any other condition(s) which may be stipulated by the CN as being necessary for my restoration to service.

Pursuant to this agreement, Claimant was subjected to drug testing on July 14, 2007. This test was positive for marijuana (THC). Consequently, Claimant was removed from service and directed to attend a formal investigation at which he was charged with violating Rule G and his reinstatement agreement. Following the investigation, Claimant was dismissed from service.


At his investigation, Claimant did not challenge the veracity of the drug test results. Instead, he testified that he had "attended a concert at the River Center [four days earlier] and apparently there was a lot of illegal drug smoking going on at the concert." The Organization submitted a document asserting that second hand smoke can cause a positive drug test result for up to ten days.

This Board is somewhat leery of accepting passive inhalation as an exception to the Rule G prohibition on the presence of marijuana in an employee's blood or urine. For one thing, it would


be too easy an explanation for a positive drug test where the employee is not actually caught smoking marijuana. For another, the medical evidence shows that any level of marijuana entering the system through passive inhalation will result in the same effects as if the individual personally smoked the marijuana. The only difference is that it would take longer and/or require greater concentrations of marijuana smoke to reach the same level. In other words, someone with a THC metabolite concentration of 100 ng/ml will exhibit the same symptomology whether smoking marijuana or inhaling the smoke of other users. The greater the concentration, though, the less likely it is the result of passive inhalation.

Under the circumstances in this case, we are inclined to give Claimant the benefit of the doubt. We also note that Claimant has satisfactorily complied with the conditions of his reinstatement for more than three years before this incident. Accordingly, we will direct that Claimant be reinstated to service without seniority rights unimpaired, but without compensation for time lost. Claimant's return to work will be subject to the same conditions as stated in his earlier reinstatement, but with a new five year testing period to commence upon the date of his first day back at work. Claimant is cautioned that this is a last chance to demonstrate to the Carrier that he can remain in compliance with these requirements. He would be well-advised to avoid venues and situations where he might be exposed to second hand marijuana smoke. Not only does his job depend upon it, so does the safety of his fellow employees and the general public.

AWARD: Claim sustained in accordance with the above Findings.


Barry E. Simon
Chairman and Neutral Member

Richard K. Radek
Employee Member



Timothy E. Rice
Carrier Member

Dated: September 8, 2008
Arlington Heights, Illinois

AWARD NO. 9
Case No. 9

Organization File No.
Carrier File No. IC-111-107-94

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Bruce Z. Deardon for reinstatement to the service of Illinois Central Railroad with all seniority unimpaired, all notations in connection with this discipline be removed from his personal work record and that he be compensated from the date he was removed from service (October 28, 2007) until the date he resumes service, plus all time lost including costs for health and welfare and restoration of all vacation entitlements as a result of same, account alleged violation of CN/IC Railroad General Rules B, H, and Rule 100 in connection with (1) displaying an insubordinate, uncooperative, quarrelsome and an intimidating attitude toward a Trainmaster when allegedly engaged in verbally abusive language and behavior to him; (2) and allegedly attempting to intimidate said Trainmaster by allegedly bumping into him in a physically threatening manner and (3) delaying assignment L-56271R-28 at 0700 hours on October 28, 2007 in Jackson, MS.

FINDINGS:

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

On October 8, 2007, Claimant was assigned as engineer on assignment L56271R-28, coming on duty at 7:00 am at Jackson, Mississippi. According to the Carrier, Trainmaster Robert Wade

received a phone call from Claimant's conductor to find out what work the assignment would be doing. Claimant was able to hear the phone conversation on the speakerphone. Claimant took exception with the trainmaster's instruction that they were to perform work on the North Lead and yelled into the phone that the assignment was supposed to work the South Lead. When the trainmaster instructed Claimant to go to work and not argue with him, Claimant replied, "Yes sir, Boss. I'se gets on the engine now. I'se do whats ever you say, Boss."

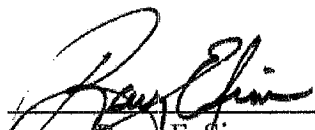
According to Trainmaster Wade, approximately fifteen or twenty minutes later he noticed Claimant walking to his engine, "taking as much time as he could trying to delay the job possibly just being real slow with everything working at a snail's pace." When the trainmaster approached him, Claimant started yelling that he was inspecting his engine. When he asked Claimant if there was a problem with the job, Claimant yelled, "No, I don't have a problem with this job; I've got a problem with you." When the trainmaster questioned what he meant, Claimant moved toward him and bumped him with his stomach. The trainmaster explained that Claimant was leaning on him "in a very threatening manner about four inches from [his] face." He said Claimant then yelled, "I've got a problem with you treating me like a dog." This conversation continued until the trainmaster took a step back and told Claimant he was out of service.

Claimant was subsequently directed to attend a formal investigation at which he was charged with engaging in verbally abusive language and behavior toward Trainmaster Wade, threatening to intimidate him and delaying his assignment. Following the investigation, Claimant was dismissed from service.


The Board has reviewed the record of the investigation and concludes that there was substantial evidence to support the Carrier's charge against Claimant. Although the Organization maintains that the case comes down to a dispute between the testimony of the trainmaster and that of Claimant, we must note that this Board does not sit to weigh the evidence. That function is reserved to the Hearing Officer, and we will reverse that decision only when it is clear it was made unreasonably. We can make no such finding in this case.

We find, however, that the discipline imposed was excessive. Accordingly, we will direct that Claimant be returned to service with seniority rights unimpaired, but without compensation for time lost. Claimant should understand that he will be expected to comply fully and appropriately with all directives from supervisory forces.


AWARD: Claim sustained in accordance with the above Findings.



Barry E. Simon
Chairman and Neutral Member



Richard K. Radek
Employee Member



Timothy E. Rice
Carrier Member

Dated: July 25, 2008
Arlington Heights, Illinois

AWARD NO. 10
Case No. 10

Organization File No.
Carrier File No. IC-111-108-4

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer C. D. Harvey for payment of a thirty day actual suspension and removal of a forty-five (45) day deferred suspension and payment for one (1) day attending the investigation held on December 4, 2007 in connection with an alleged failure to comply with Life Rule T-12-#12 and 6 (not wearing personal protective equipment) while working on Assignment Q19491-26.

FINDINGS:

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


The facts in this case are undisputed. While Claimant was working as an engineer in a turnaround assignment, Claimant got off of Train Q194 at Rives and was to get on Train M335. While Claimant was on the ground, Supervisor of Locomotive Engineers Ed Regel, who had been riding in Train M335, noticed that Claimant was not wearing his reflective vest or the side shields on his safety glasses. Regel instructed Claimant to put on this equipment. However, when Regel


departed Rives on Train Q194, he saw Claimant on the ground giving the train a roll by inspection. He still had not put on the safety equipment.


Claimant was consequently directed to attend a formal investigation at which he was charged with failing to comply with the Carrier's rules regarding personal protective equipment. Following the hearing, Claimant was assessed a forty-five day deferred suspension. This discipline required him to serve a thirty day suspension that had been deferred from a prior incident.

At the hearing, Claimant acknowledged that he was not wearing the safety equipment when he changed trains at Rives. Consequently, we must conclude that there was substantial evidence to support the Carrier's charge against Claimant. In light of his prior record, we find the discipline assessed to be an appropriate exercise of progressive discipline. We have no basis for modifying the discipline imposed. In reaching this conclusion, we have considered the various objections raised by the Organization and find them to be without merit.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Richard K. Radek
Employee Member


Timothy E. Rice
Carrier Member

Dated: *October 27, 2018*
Arlington Heights, Illinois

AWARD NO. 11
Case No. 11

Organization File No.
Carrier File No. IC-111-108-2

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer J. D. Friend removal of a thirty (30) day suspension and payment for same, plus one (1) day attending the investigation held on November 12, 2007 in connection with an alleged raking incident and alleged damage sustained to locomotive RE 1208 and railcar IC 768930 on November 3, 2007.

FINDINGS:

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

On November 3, 2007 Claimant was the engineer on assignment G81371-03 with Conductor C. L. Speed. During their tour of duty, the crew was required to set out 38 hoppers at the Bunge Bean plant in Marks, Mississippi. Pursuant to instructions from the trainmaster, Speed lined the inside storage track switch for their movement and determined that the track would hold the 38 cars. He then returned to the train, made a cut for the 38 cars and unlocked the main line switch. After the switch timed out, he lined it for the storage track and directed Claimant to shove 40 car lengths.

After the cars were shoved in and tied down, a Bunge employee informed Conductor Speed that the lead car of the shove had struck a Bunge locomotive that was fouling the track.


As a result of this incident, Claimant and his conductor were directed to attend a formal investigation at which they were charged with damaging the locomotive and railcar. Following the investigation, Claimant was issued a thirty day suspension.


We have reviewed the record of the investigation and conclude that the discipline cannot be supported. Prior to making the shoving move, Claimant's conductor ascertained that the movement would stay within the track capacity and that the switches were all lined for the movement. Thereafter, the conductor gave car counts to Claimant, who was 38 car lengths from the leading end of the movement. Claimant complied with these car counts. He apparently was unaware of the fact that his conductor was not riding the point of the movement.

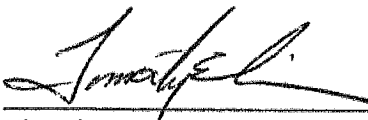
The Carrier rests its case on the rules regarding shoving movements and the requirement for C.R.S. (Coverage, Route and Shove). Coverage, under this rule, requires that a crew member be on the leading end of the movement or in a position to clearly see the leading end of the movement. Route refers to knowing that all applicable switches and derails are lined properly for the intended movement. Once those two conditions are satisfied, the crew member controlling the movement will give instructions to the engineer for the shoving movement. The Carrier's instructions, though, state that not all shoving movements require C.R.S. An exception is granted "once the route has been established and it can be determined that movement will stay within track capacity or remain in clear view during the shove." In this case, Conductor Speed determined that the movement would stay within track capacity.

The Carrier has not shown why this exception to the rule did not apply in this case. Thus, we conclude Claimant operated the engine pursuant to his conductor's instruction with every expectation that the movement was protected. The Carrier has not met its burden of proof that Claimant had any responsibility for this incident. The Agreement, therefore, was violated.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.


Barry E. Simon
Chairman and Neutral Member


Richard K. Radek
Employee Member


Timothy E. Rice
Carrier Member

Dated: October 27, 2008
Arlington Heights, Illinois

AWARD NO. 12

Case No. 12

Organization File No.

Carrier File No. IC-111-108-22

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer C. M. McKnight for the removal of the (10) day suspension for the alleged violation of Canadian National/Illinois Central U. S. Operating Department Rules 1105 in connection with allegedly operating train G81091-10 with incorrect Tabular General Bulletin Orders (TGBO) on Sunday, November 11, 2007 while working as Engineer on Train G81091-10, with all notations of discipline assessed expunged from his personal work record and compensation for all time lost, including loss of earnings due to attending the investigation.

FINDINGS:

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

The essential facts in this case are undisputed. When Claimant boarded Train G81091-10 at Memphis, Tennessee on November 11, 2007, the Tabular General Bulletin Orders (TGBO) were not on his train. Claimant's conductor called the train dispatcher, but could not converse with him due to communication problems. He then called the Assistant Superintendent, who arranged to have

the TGBO faxed to the tower. The Assistant Superintendent then went to the tower to retrieve the fax and delivered it to the conductor. Claimant then began his trip toward Jackson, Mississippi.

After Claimant's train arrived at Jackson, it was discovered that the crew had been given the wrong TGBO. The orders they were given gave them authority to operate from milepost 5.4 to milepost 23 on the Yazoo District. To get to Jackson, the crew operated to milepost 205.7.

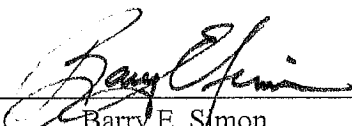
Claimant and his conductor were consequently directed to attend a formal investigation at which they were charged with operating with the incorrect TGBO. At the investigation it was established that the crew that brought Claimant's train from Fulton to Memphis should have had TGBO No. 837. It was this TGBO that was erroneously sent to the Assistant Superintendent for delivery to Claimant and his conductor. Following the investigation, Claimant was assessed a ten day suspension.

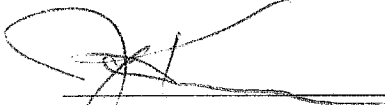
We have reviewed the 185 page record of the investigation, and conclude that the Carrier established by substantial evidence that Claimant operated his train without the proper TGBO. Operating Rule 1105 requires members of the train crew to determine if they have the correct TGBO and that it covers the entire route over which the train will operate. Obviously, Claimant did not comply with these requirements.

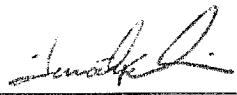
The Organization contends that Claimant was not totally at fault in this case. It notes that the wrong orders were sent by the dispatcher and then passed along to Claimant by the Assistant Superintendent. While each of them might have had an opportunity to catch the error, it cannot be denied that the final check was the responsibility of the employees who would be operating the train. Claimant was not in compliance with Operating Rule 1105 and was properly subject to discipline.

Under the circumstances in this case, we do not find the discipline imposed to be excessive. In reaching this conclusion, we have considered the various objections raised by the Organization and find them to be without merit.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


J. R. Koonce
Employee Member


Timothy E. Rice
Carrier Member

Dated: October 31, 2009
Arlington Heights, Illinois

AWARD NO. 13

Case No. 13

Organization File No.

Carrier File No. IC-111-108-25

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer B. R. Reed for the removal of the (15) day suspension for the alleged violation of Canadian National/Illinois Central U. S. Operating Department Rules 211 and 600 in connection with an alleged derailment and alleged damages sustained to the bumping post and AFX 635860 at Cargill at approximately 0240 hours, Tuesday, November 27, 2007 while working as Engineer on Assignment RJY21-26 with all notations of discipline expunged from his personal work record and compensation for all time lost, including loss of earnings due to attending the investigation.

FINDINGS:

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

On November 27, 2007 Claimant was working as the engineer on Assignment RJY21-26 on President's Island in Memphis, Tennessee. During his tour of duty, he was required to shove thirteen loads and two empties into Track No. 1 at the Cargill Bean Plant. While making this move, the lead

car hit the bumping post at the end of the track. The car derailed and the bumping post was damaged as a result of this collision.

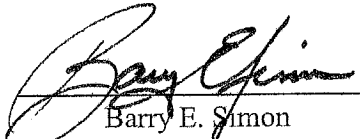
Claimant and his crew were subsequently directed to attend a formal investigation in connection with this incident. The record of the investigation shows that Claimant was shoving the fifteen cars under the direction of his conductor, who was giving car counts over the radio. The last car count Claimant received was for three cars. At that point, the conductor's radio apparently went dead. Claimant began to stop the movement when he was one and one-half car lengths from the bumping post, but it was too late. Following the investigation, Claimant was assessed a fifteen day deferred suspension.

Operating Rule 211 required Claimant to stop his movement within one-half the distance of the last car count he received. Thus, his stop should have been completed at the one and one-half car length point. That is not when he should have started to stop. When asked if he thought the rule was complied with, Claimant responded "No." We conclude, therefore, that there was substantial evidence to support the Carrier's charge against Claimant.

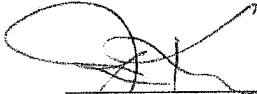
The Organization notes that neither the conductor nor the brakeman received any discipline as a result of this incident. It asserts the brakeman should have been in a position to convey signals to Claimant in the event the conductor's radio failed. We do not agree that the responsibility for this incident can be shifted to the other employees. Claimant had nearly three years of experience as an engineer and knew that he was required to stop within half the distance of the last car count. This rule is specifically designed to afford protection in the event of a communication failure. As the regular engineer on this assignment, Claimant knew where he was in respect to the bumping post and

there is no reason he could not have complied with the rule. Under the circumstances, we take no exception to the amount of discipline imposed. In reaching that conclusion, we have considered the various procedural arguments raised by the Organization and find them to be without merit.


AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



J/R. Koonce
Employee Member



Timothy E. Rice
Carrier Member

Dated: *October 31, 2009*
Arlington Heights, Illinois

AWARD NO. 14
Case No. 14

Organization File No.
Carrier File No. IC-111-108-26

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer R. W. Baker for the removal of the Letter of Reprimand for the alleged violation of Canadian National/Illinois Central General Code of Operating Rule I assessed on December 21, 2007 in connection with alleged excessive absenteeism during the period of October 29, 2007 through November 25, 2007 with notations of discipline assessed expunged from his personal work record and compensation for all time lost, including loss of earnings due to attending the investigation.

FINDINGS:

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

This is one of several cases before this Board which deal with the Carrier having disciplined employees for excessive absenteeism where the employee's absenteeism is measured against the average absenteeism of other employees at the facility. In this case, the Carrier determined that Claimant had been absent on three days during the period from October 29 through November 25, 2007. During the same 28 day period, according to the Carrier, all of the other engineers at the Baton

Rouge Terminal averaged 1.03 days of absence.¹ After an investigation at which he was charged with violating General Rule I by being excessively absent, Claimant was issued a formal reprimand.

Rule I deals generally with the obligation upon employees to be at work when required. It contains the statement, "Employees are required to work regularly and without excessive layoffs or absences." It does not define what is excessive. It appears that the Carrier does not have a single standard for determining what is excessive absenteeism. Instead, that standard varies from work location to work location and from month to month. In any given four week period, employees are evaluated against their peers, but only at their terminal. Thus, an employee may have a constant number of absences from month to month, but his record will be excessive only in months where the rest of the engineers have better attendance. If working at another terminal, his attendance might not be excessive if the other engineers at that terminal tend to lay off more frequently. To be sure, the record reflects that Claimant worked at two different terminals, but his attendance was measured only against the engineers at Baton Rouge. The end result is that each employee does not know whether any particular absence would subject him to discipline until the records are compiled at the end of the month. This conflicts with the fundamental principle that employees must be made aware of the conduct that is expected of them.

In Third Division Award No. 26513 involving these parties, Referee Margo Newman wrote:

. . . There are two things that are clear in this record. The first is that Carrier has no specific policy upon which it determines that an employee's absence is excessive, and that, comparing Claimant to 6 other extra board employees is insufficient, in and of itself, to support a charge of excessive absenteeism. . . .

¹The Board notes that the Carrier's computation was erroneous. According to Trainmaster Catalanatto, there were 19 engineers besides Claimant. Those employees were absent a total of 27 days, which yields an average of 1.42 days, not 1.03.

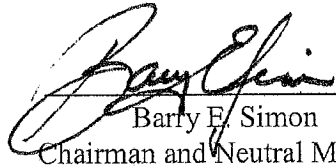
The Organization cites numerous Awards dealing with similar measures of excessive absenteeism. In a series of Awards on the Second Division, NRAB (Award Nos. 13445 through 13448 involving the Springfield Terminal Railway Company) Referee Martin Malin rejected the carrier's use of "shop averages" as a basis for determining when an employee would be subject to discipline for excessive absenteeism. Pointing out that each claimant would not have known the shop average at the time he took his sick days, Referee Malin speculated that the claimant in Award No. 13446 might not have been disciplined if he worked at the shop involved in Award No. 13445, which had a higher absenteeism rate. In Second Division Award No. 13614, Referee Ann Kenis also rejected the Springfield Terminal's use of the "shop average" in disciplining employees for excessive absenteeism. While the Malin and Kenis Awards also deal with the question of the use of paid sick leave under the Brotherhood Railway Carmen Agreement, it is clear from their decisions that they found the use of "shop averages" improper because of the vagueness of the standard from month to month and from shop to shop. While engineers may not receive paid sick leave, the Agreement, in Article 32, provides that "Engineers shall not be expected to work when sick."


The Board does not reject the concept that employees may be subject to discipline for excessive absenteeism. Employees are expected to come to work regularly and absent themselves only when they are unable to work. Many arbitral tribunals in this industry have held that even legitimate sickness can turn into excessive absenteeism that might subject an employee to disciplinary action. The Carrier is privileged to set a reasonable standard for attendance. What it may not do, however, is have a standard that is set after the fact and varies from month to month and from

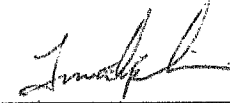
location to location. Employees have a right to know what is expected of them, and the Carrier has the right to discipline employees who do not meet that standard.

We find that the Carrier has not met its burden of proving that Claimant was excessively absent when its sole basis for making such a determination was the average attendance rate of his fellow engineers. The reprimand must be rescinded.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 30 days.


Barry E. Simon
Chairman and Neutral Member


J. R. Koonce
Employee Member


Timothy E. Rice
Carrier Member

Dated: October 31, 2009
Arlington Heights, Illinois

AWARD NO. 15

Case No. 15

Organization File No.

Carrier File No. IC-111-108-30

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer J. W. Riels for the removal of the Letter of Reprimand for the alleged violation of CN LIFE U.S. Safety Rule T-12, No. 2 at approximately 0130 hours, Sunday, December 2, 2007 while working as Engineer on assignment R 91271-01 with notations of discipline assessed expunged from his personal work record and compensation for all time lost, including loss of earnings due to attending the investigation.

FINDINGS:

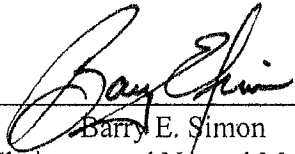
The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 15, 2007, this Board has jurisdiction over the dispute involved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

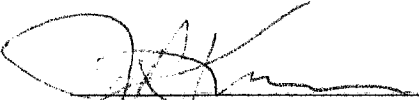
On December 2, 2007, at approximately 1:30 am, Assistant Superintendent M. R. McClaren entered the cab of Claimant's locomotive in Memphis Yard and found Claimant sitting in the engineer's seat. Claimant was not wearing his safety glasses at the time; they were on the control stand next to him. Claimant was consequently directed to attend a formal investigation in connection

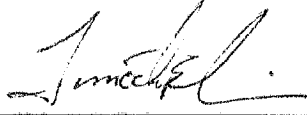
with his not wearing his safety glasses. Following the investigation, Claimant was issued a Letter of Reprimand.

Our review of the record of the investigation shows that the Carrier had substantial evidence to support its charge against Claimant. Although Claimant asserted he was cleaning his glasses at the time, the fact that they were on the control stand suggests otherwise. We take particular notice of Claimant's statement regarding his opinion of the Carrier's rule that eye protection must be worn while on CN property or while in service to CN, except under certain circumstances such as inside an office. He stated, "I think the rule ought to be changed to when inside a cab, just like in a vehicle or an office. If we're in an engine and the windows are closed and the doors shut, I don't see why we can't take them off." Whatever Claimant might think about the rule, it was properly promulgated by the Carrier and he has a duty to comply with it. Under the circumstances, we find that the issuance of a Letter of Reprimand was neither arbitrary nor unreasonable. In reaching this conclusion, we have considered the Organization's arguments and find them to be without merit.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


J. R. Koonce
Employee Member


Timothy E. Rice
Carrier Member

Dated: December 2, 2009
Arlington Heights, Illinois

AWARD NO. 16
Case No. 16

Organization File No.
Carrier File No. IC-111-108-54

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Matthew O. Stewart for the removal of the 10-day suspension (deferred) for the alleged violation of Canadian National/Illinois Central General Code of Operating Rule I assessed on December 19, 2007 for the alleged violation of Canadian National/Illinois Central General Code of Operating Rule I in connection with his alleged absenteeism during the period of October 29, 2007 through November 25, 2007 with notations of discipline expunged from his personal work record and compensation for all time lost, including loss of earnings due to attending the investigation.

FINDINGS:

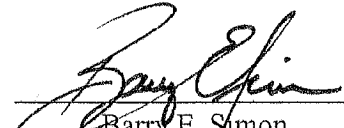
The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 15, 2007, this Board has jurisdiction over the dispute involved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

Following a formal investigation at which he was charged with being excessively absent, Claimant was assessed a ten day deferred suspension. The record of the investigation established that Claimant had been marked off sick from 2200 hours on November 9, 2007 through 2046 hours on November 11. The Carrier concluded that he was absent for three days, although he was marked

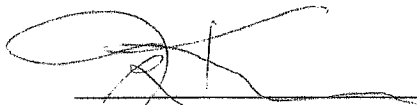
off for less than 48 hours. It then compared Claimant's attendance during the 28 day period from October 29 through November 25, 2007 against the other twelve engineers on the New Orleans board. It found that those engineers were absent a total of ten days. Based upon those figures, the Carrier computed the average absenteeism of those engineers to be "approximately one third of a day," although it appears the average should have been slightly more than eight-tenths of a day.

Aside from finding that the Carrier's math leaves a bit to be desired, we cannot find that Claimant's absences were excessive when the only standard used by the Carrier is the average attendance of the engineers in the terminal during that particular 28 day period. For the reasons we discussed at length in Award No. 14, we must sustain the claim.


AWARD: Claim sustained. Carrier is directed to comply with this Award within 30 days.



Barry E. Simon
Chairman and Neutral Member



J. R. Koonce
Employee Member



Timothy E. Rice
Carrier Member

Dated: October 31, 2009
Arlington Heights, Illinois

AWARD NO. 17

Case No. 17

Organization File No.

Carrier File No. IC-BLET-2008-00005

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer A. J. Snodgrass for the removal of the 25-day suspension consisting of a fifteen (15) day suspension assessed on April 15, 2008 and a ten (10) day suspension activated by the 15-day suspension assessed to Engineer A. J. Snodgrass for the alleged violation of Canadian National/Illinois Central General Code of Operating Rule I assessed on December 19, 2007 for the alleged violation of Canadian National/Illinois Central General Code of Operating Rule I in connection with his alleged excessive absenteeism during the period of February 18, 2008 through March 16, 2008 with notations of discipline expunged from his personal work record and compensation for all time lost, including loss of earnings due to attending the investigation.

FINDINGS:

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

Following a formal investigation at which he was charged with being excessively absent, Claimant was assessed a fifteen day suspension. This suspension additionally required him to serve a ten day deferred suspension from a previous disciplinary action. The record of the investigation

established that Claimant had five days of absence during the period from February 18 through March 16, 2008. The Carrier compared Claimant's attendance to the average absenteeism of the other engineers at Baton Rouge during the same period, which was 0.66 days (18 engineers with a total of 12 days absent). According to the Carrier, Claimant was AWOL on two of those dates.

With regard to the two dates the Carrier contends Claimant was AWOL, it appears he was 16 and 42 minutes late in marking up after laying off, although Claimant testified he had tried to call in prior to the end of the 24 hour period.

In Award No. 14 we addressed at some length the Carrier's use of averages based upon the attendance of the engineers at the particular location during the particular month. We concluded that such a system was inherently unfair. In this case, the Organization has raised two more problems with the Carrier's system for computing attendance standards. First, it asserts that at least three engineers at Baton Rouge were not considered in the Carrier's computations. Second, it says that four of the five days cited by the Carrier were dates that Claimant was set back in train service. Although the Carrier apparently ran a computation comparing Claimant to other employees in train service, it did not provide that information at the investigation.


While this Board does not condone excessive absenteeism, and recognizes, as we did in Award No. 14, that employees are expected to report or be available for work on a regular basis, we cannot find that the Carrier has proven its charge in this case. Aside from the problems we have discussed with the method employed by the Carrier for setting attendance standards after the fact, we must also consider that two of the absences cited by the Carrier were included simply because he was less than an hour late in marking up. We cannot find in the record that he missed work

because of those delays, and it appears that he marked off sick shortly thereafter on the second date.

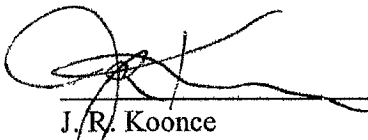
Accordingly, we must discount those two days.

Finding that the Carrier has not proven its charge, the discipline cannot stand.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 30 days.



Barry E. Simon
Chairman and Neutral Member



J. R. Koonce
Employee Member



Timothy E. Rice
Carrier Member

Dated: December 2, 2009
Arlington Heights, Illinois

AWARD NO. 18
Case No. 18

Organization File No.
Carrier File No. IC-BLET-2008-00020

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer T. J. Green for the removal of the 10-day suspension for the alleged violation of Canadian National/Illinois Central General Code of Operating Rule I assessed on April 22, 2008 in connection with his alleged excessive absenteeism during the period of March 17, 2008 through April 13, 2008 with notations of discipline expunged from his personal work record and compensation for all time lost, including loss of earnings due to attending the investigation.

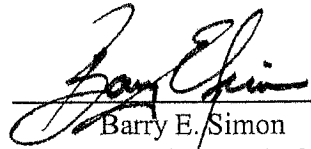
FINDINGS:

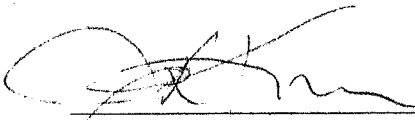
The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 15, 2007, this Board has jurisdiction over the dispute involved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

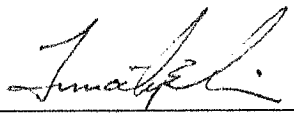
Following a formal investigation at which he was charged with excessive absenteeism, Claimant was assessed a ten day suspension. During the twenty-eight day period from March 17 through April 13, the record shows that Claimant missed work on five days. The Carrier compares this to the record of the other engineers at New Orleans and concludes they had an average of 0.83 days absent during the same period.

In Award No. 14 we discussed at length the issue of using "shop" averages to determine whether an employee is excessively absent. While we maintain the same opinion in this case, we must also look at Claimant's attendance record apart from those averages. We concur with the Carrier that five days of absence in a four week period is excessive. As has been noted in many arbitration decisions in this industry, the fact that an employee may be legitimately ill and have received permission to be absent does not protect him from discipline when those absences reach an excessive level. Employees are expected to come to work or be available for call on a regular basis. In this case, we find that Claimant failed to meet that obligation. The discipline was supported by substantial evidence and was neither arbitrary nor unreasonable.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


J. R. Koonce
Employee Member


Timothy E. Rice
Carrier Member

Dated: December 2, 2009
Arlington Heights, Illinois

AWARD NO. 19
Case No. 19

Organization File No.
Carrier File No. IC-BLET-2008-00029

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer D. G. Williams, Jr. for the removal of the 45-day suspension consisting of a thirty (30) day suspension assessed on April 3, 2008 and a fifteen (15) day suspension activated by the 30-day suspension assessed to Engineer D. G. Williams, Jr. for the alleged violation of Canadian National/Illinois Central General Code of Operating Rule 410 in connection with failing to sound an audible warning for roadway workers and machinery at Wesson Junction on the McComb Subdivision while working as Engineer on M30271-27 on February 28, 2008 and removal of the 15-day suspension where he accepted responsibility by signing a letter on February 6, 2008 for causing damage to the switch on the South Main and KCS switch on January 30, 2008 with all notations of discipline expunged from his personal work record and compensation for all time lost, including loss of earnings due to attending the investigation.

FINDINGS:

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


While Claimant was working as engineer on Assignment M30271-29 on the McComb Subdivision on February 28, 2008, an FRA Inspector was being escorted by Track Inspector Doug

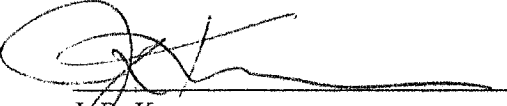
Sicks in the vicinity of Wesson Junction. The FRA Inspector informed Sicks that he wanted to do a whistle test on a train at a location other than a road crossing. The two men, therefore, positioned themselves on opposite sides of the track near the fixed signal at the junction. Claimant, who was traveling in a southward direction, did not blow his whistle upon seeing the men. He was therefore directed to attend a formal investigation, after which he was assessed a thirty day suspension. This suspension additionally required him to serve a fifteen day suspension that had been deferred from a previous incident.

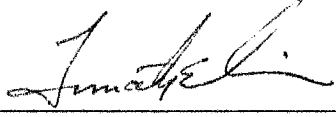
There is no question that Claimant did not sound his horn where the inspectors were standing. Rule 410.6 requires the engineer to sound the horn when approaching roadway workers or equipment on or near the track. Claimant's explanation for not sounding the horn was that he did not see the men. Track Inspector Sicks testified that he was there with the FRA Inspector. Photographs introduced at the investigation illustrate that they could have been seen had they been standing where they said they were. It is not the role of this Board to determine whether they should have been observed by Claimant. That is a determination to be made by the Hearing Officer, and we will overrule that determination only if we can find it was unreasonably made. We can make no such finding in this case. We do not consider the Carrier's failure to have the FRA Inspector as a witness to be fatal. He is not under the control of the Carrier and it could not compel his attendance at the investigation. We cannot, therefore, draw an adverse inference from his absence. While the Carrier was then required to prove its case with only the testimony of Track Inspector Sicks, that does not diminish the Hearing Officer's determination with regard to his credibility.

We conclude that there was substantial evidence to support the Carrier's charge against Claimant. We do not find the discipline imposed to be arbitrary or unreasonable. In reaching this conclusion, we have considered the various arguments advanced by the Organization and find them to be without merit.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


J. R. Koonce
Employee Member


Timothy E. Rice
Carrier Member

Dated: December 2, 2009
Arlington Heights, Illinois

AWARD NO. 20
Case No. 20

Organization File No.
Carrier File No. IC-BLET-2008-00078

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer J. A. Calloway for removal of the ten (10) day suspension from his personal record (August 7 through August 16, 2008) plus compensation for attending the July 23, 2008 formal investigation in connection with allegedly exceeding maximum authorized speed while working with the light locomotive GTW 5859 on the Baton Rouge Subdivision in ABS territory while working on Job RDS05 on June 18, 2008.

FINDINGS:

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


Following a collision between Claimant's light engine and an automobile at a grade crossing, Claimant was instructed to bring the engine to Destrehan to have the event recorder tape downloaded. This download indicated that Claimant's engine had been traveling at 38.9 mile per hour. The maximum speed for a light engine movement in this territory is 30 miles per hour. Claimant was subsequently directed to attend a formal investigation at which he was charged with exceeding

the maximum authorized speed. Following the investigation, Claimant was assessed a ten day suspension.

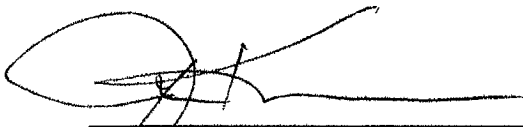
The record of the investigation shows that Claimant, his conductor and his brakeman acknowledged that they did not perform a speed check on the engine speedometer, except at the beginning of their trip when it checked accurately at 9 or 10 mph. Claimant and his Conductor, though, testified that they had not passed a measured mile during their trip. Consequently, it would not have been possible for them to perform this check. It is also evident that the speedometer was not properly recording the speed of the engine in the 30 mph range, although it was found to be accurate at 15 or 16 mph.

Based upon the record before us, we conclude there is evidence that Claimant was speeding, but he was relying upon the speedometer on the locomotive for maintaining his speed consistent with the Carrier's restrictions. It is not disputed that the speedometer was faulty. We also find no evidence Claimant had an opportunity to check the accuracy of the speedometer at higher speeds. We note, however, that Claimant was an experienced engineer and should have recognized the difference between 30 mph and almost 39 mph. He must bear some responsibility for speeding, but his discipline should be mitigated by the fact that the speedometer was unreliable. Claimant's record does not reflect any prior discipline. Under the circumstances, therefore, we will direct that the discipline imposed be reduced to a ten day deferred suspension and that Claimant be made whole for time lost as a result of the suspension.


AWARD: Claim sustained in accordance with the above Findings. Carrier is directed to comply with this Award within 30 days.



Barry E. Simon
Chairman and Neutral Member



J. R. Koonce
Employee Member



Timothy E. Rice
Carrier Member

Dated: December 2, 2009
Arlington Heights, Illinois