

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF	)	
LOCOMOTIVE ENGINEERS	)	
AND TRAINMEN	)	
	)	CASE NO. 80
vs.	)	AWARD NO. 80
	)	
CANADIAN NATIONAL/ILLINOIS	)	
CENTRAL RAILROAD	)	

**STATEMENT OF CLAIM:**

Claim of CN/IC Engineer Broderick King for reinstatement to service with seniority and vacation rights unimpaired, all notations of discipline assessed on April 11, 2014 expunged from his personal work record and compensation for all time lost as a result of same until the date he resumes service, plus out of pocket expenses for health and welfare and any other benefits which would be provided to him as a CN/IC Locomotive Engineer, for the alleged violation of CN/IC ABTH--Rule 300--Train Handling General Procedures, ABTH--Rule 303--Use of Throttle and ABTH Rule 321--Stopping Train in connection with placing train A48971-25 into emergency at South Sidon stop signal while working as Engineer on train A48971-25 on December 26, 2013.

**FINDINGS:**

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

On the day of the incident, December 26, 2013, Claimant was the engineer on train A48971-25. On or about December 30, 2013, the Carrier notified him to attend an investigation to develop the facts and determine his responsibility, if any, in connection with whether he violated Carrier rules, regulations and/or policies when he placed his train into emergency at the South Sidon, Mississippi stop signal. Following the investigation, the Carrier determined that Claimant had committed the misconduct alleged, in violation of ABTH--Rule 300--Train Handling General Procedures; ABTH--Rule 303--Use of Throttle; and ABTH--Rule 321--Stopping Train. In consideration of these violations and Claimant's past discipline record, the Carrier dismissed him from service.

Claimant acknowledged at the investigation that he had placed his train into emergency at the South Sidon stop signal. He encountered an approach signal, and, he maintained, began to notch the train down to get to idle. Once he got there, Claimant explained, he put the train into dynamics. Claimant recited that he waited the requisite 10 seconds and then applied a minimum reduction. At that point, Claimant testified, the rear end of the train went into emergency, and he, in accordance with standard practice, then placed the train into emergency to keep it from separating.

Carrier Supervisor of Locomotive Engineers Jonathan Burchfield explained at the investigation that he received notification, triggered by technology on the Carrier's locomotives, that Claimant had initiated emergency braking at a speed of more than 10 miles per hour. He obtained the download and, at the hearing, explained in detail why it was apparent that Claimant failed to begin his automatic braking at a sufficient distance to prevent having to put his train into emergency, even though Mr. Burchfield conceded it was not possible to tell from the download whether the emergency was head-end initiated or undesired.

The transcript of Claimant's radio discussion with the dispatcher, Desk 4 Radio Traffic Control (RTC), was read into the hearing record. In it, Claimant stated that he placed the train into emergency because he did not want to pass the red signal, and the dispatcher asked, "So, the emergency application was initiated by you?" Claimant replied, "Yes, sir, I did initiate the emergency." At the hearing, Claimant denied having made that statement. The record also includes photographs showing that the train had stopped only approximately two car lengths from the signal, an indication that it was necessary for Claimant to put the train into emergency to avoid passing the signal.

We have reviewed the record in its entirety. First, we find no procedural irregularity which denied Claimant his right to a fair and impartial investigation. On the merits, even if, as Claimant maintained, he experienced a "kicker" when the rear of the train went into emergency, the overall record is sufficient to meet the Carrier's burden of proving, by substantial evidence, that Claimant did not engage in proper trainhandling as he failed to properly prepare to stop once he encountered the approach signal. Given the nature of the offense, and Claimant's extensive disciplinary record, we cannot say that the Carrier's decision to dismiss him represents an unfair or arbitrary exercise of the Carrier's discretion to determine penalties.

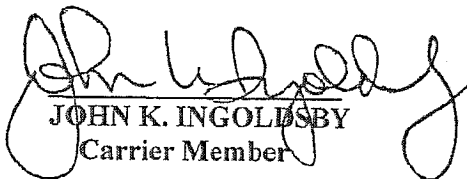
AWARD


Claim denied.



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JACALYN J. ZIMMERMAN  
Neutral Member

  
JOHN K. INGOLDSBY  
Carrier Member

  
MARCUS RUEF  
Organization Member

Dated this *23* day of *May*, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF	)	
LOCOMOTIVE ENGINEERS	)	
AND TRAINMEN	)	
	)	CASE NO. 81
vs.	)	AWARD NO. 81
	)	
CANADIAN NATIONAL/ILLINOIS	)	
CENTRAL RAILROAD	)	

**STATEMENT OF CLAIM:**

Claim of CN/IC Engineer Eddie McCandrew for reinstatement to service with seniority and vacation rights unimpaired, all notations of discipline assessed on May 21, 2014 expunged from his personal work record and compensation for all time lost as a result of same until the date he resumes service, plus out of pocket expenses for health and welfare and any other benefits which would be provided to him as a CN/IC Locomotive Engineer, for the alleged violation of CN/IC USOR Seventh Edition Effective January 2014 General Rule G-Drugs and Alcohol, Substance and Alcohol Free Environment (S.A.F.E.) Policy, Section 3.1-Paragraph B and Section 3.2 dated September 2012 and L.I.F.E. US Safety Rule Book, Second Edition for Transportation, Section IV, Substance and Alcohol Free Environment (S.A.F.E.) Policy and Guidelines, Paragraph B dated March 2005 in connection with allegedly reporting for duty under the influence of alcohol and/or other prohibited substances at 1950 hours on January 26, 2014 when called for train C74592-26 at Baldwin, Illinois and his subsequent alleged refusal to submit to a drug and alcohol test.

**FINDINGS:**

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Eddie McCandrew, had been employed by the Carrier for approximately 20 years. On May 21, 2014, following an investigation, the Carrier dismissed Claimant from service for reporting for duty under the influence of alcohol and/or other prohibited substances at 1950 hours on January 26, 2014, when he was called for train C74592-26 at Baldwin, Illinois, and for his subsequent refusal to submit to a drug and alcohol test. The Carrier found that Claimant had violated USOR Seventh

Edition Effective January 2014—General Rule G—Drugs and Alcohol; Substance and Alcohol Free Environment (S.A.F.E.) Policy, Section 3.1—paragraph B and Section—3.2, dated September 2012 and L.I.F.E. US Safety Rule Book, Second Edition for Transportation, Section IV, Substance and Alcohol Free Environment (S.A.F.E.) Policy and Guidelines, Paragraph B, dated March 2005.

The events which led to the action against Claimant began when, on the day at issue, Crew Caller David Crawl called Claimant to work Train C74592-26, on duty at 1950 hours. Mr. Crawl reported to Trainmaster Philip Miller that Claimant's speech had sounded slurred and he did not feel Claimant was fit for duty.

Trainmaster Miller testified that based upon this information he, along with Trainmaster Matthew McLaren and Assistant Trainmaster Anthony Lyles, met at the Baldwin Yard Office. When Claimant's crew arrived, both Mr. McLaren and Mr. Miller testified, Claimant mumbled and had difficulty answering questions, and that the pupils of his eyes were very large and twitching back and forth. Mr. McLaren stated that he asked Claimant to breathe towards him and he smelled alcohol on his breath and, as he moved closer, the same smell emanating from Claimant's body. Trainmaster Miller testified that he also smelled alcohol on Claimant. Mr. Lyles confirmed the two Trainmasters' accounts of these events.

The three Carrier Officers concluded that Claimant definitely appeared impaired. Mr. McLaren informed Claimant that they would transport him to a hospital for reasonable suspicion drug/alcohol testing, and he and Mr. Miller drove Claimant to Sparta Community Hospital. Both Mr. McLaren and Mr. Miller testified that, during the trip, they overheard Claimant on a telephone call, stating that he needed to "Red Block" himself and mentioning substance abuse. The Carrier's witnesses explained that Red Block is a policy in effect on some Carriers, but not this one, that allows an employee, if under the influence of alcohol or drugs, to mark off rather than take a call.

Mr. McLaren described that when they arrived at the hospital Claimant initially refused to come inside but did so eventually, and paused for a few minutes at the admissions desk. He then told the clerk that he was having chest pains and needed medical attention. Hospital personnel took him to the emergency room. A short time later, Mr. McLaren stated, a nurse came out and told him that Claimant would not take any tests, and shortly thereafter a nurse informed them that Claimant wanted the Carrier officers to leave, and they did so.

Claimant testified at the investigation that he was not under the influence of alcohol or drugs at the relevant times. He maintained that he had previously suffered a heart attack and was indeed having chest pains when he arrived at the hospital, likely as the result of the stress of the Carrier Officers converging upon him when he arrived at work. He denied that he had refused any testing, claiming that he had been "knocked out" at the hospital.

We have carefully reviewed the record in its entirety. The testimony of the Carrier's witnesses is sufficient to meet its burden of proving Claimant's guilt of the charges by substantial evidence. Indeed, they testified at length concerning the careful manner in which they determined reasonable suspicion that Claimant was under the influence of prohibited substances when he arrived at work, gave testimony not rebutted by Claimant that he attempted to mark off pursuant to a substance abuse program, albeit one not in effect on this railroad, and described how Claimant failed to submit to the required medical testing. His guilt has been established.

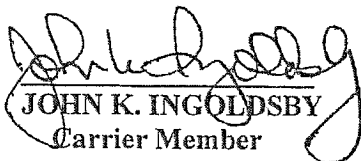
However, we find, under the particular circumstances of this case, that Claimant should be assessed a conditional suspension in accordance with the Carrier's Substance and Alcohol Free Environment Policy and Guidelines. Claimant may be reinstated to employment, without backpay, when he has fully complied with all instructions issued him by any Carrier official, including, among others, the Director of Medical Services or an Employee Assistance Program (EAP) counselor, and has been cleared by the appropriate authorities to resume his employment. Should Claimant fail to comply with all instructions in connection with this violation, this suspension will automatically be converted to a dismissal.

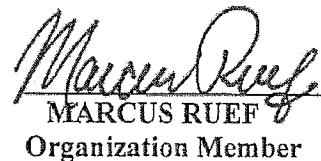
AWARD

Claim sustained in accordance with Findings.



JACALYN J. ZIMMERMAN  
Neutral Member

  
JOHN K. INGOLDSBY  
Carrier Member

  
MARCUS RUEF  
Organization Member

Dated this *13* day of *May*, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF )  
LOCOMOTIVE ENGINEERS )  
AND TRAINMEN )

vs. )

CANADIAN NATIONAL/ILLINOIS )  
CENTRAL RAILROAD )

CASE NO. 82  
AWARD NO. 82

**STATEMENT OF CLAIM:**

Appealing the five (5) days actual Suspension from Service (served August 1, 2014 through August 5, 2013) assessed to of CN/IC Railroad Engineer David Terven on July 28, 2014, which was revised from the original discipline letter dated July 25, 2014 in connection with the formal investigation that was held on July 18, 2014 to develop the facts and determine his responsibility, if any, and whether or not he violated any CN rules, regulations and/or policies in connection with AMC Guidelines.

**FINDINGS:**

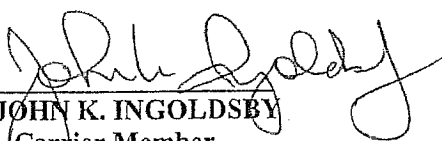
Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. However, we find, based upon the nature of the offense and Claimant's personal record, that the penalty assessed is arbitrary, capricious and excessive, and reduce it to five-day deferred suspension. We order Claimant made whole for his losses, in accordance with the usual practices in effect on this property, and that his personal record be corrected accordingly. In addition, the Board retains jurisdiction to reconsider this penalty as the result of another claim involving Claimant pending at the National Railroad Adjustment Board.

AWARD

Claim sustained in accordance with Findings.

  
JACALYN J. ZIMMERMAN  
Neutral Member

  
JOHN K. INGOLDSEY  
Carrier Member

  
MARCUS RUEF  
Organization Member

Dated this *6th* day of *May*, 2016.



PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF )  
LOCOMOTIVE ENGINEERS )  
AND TRAINMEN )  
vs. ) CASE NO. 83  
CANADIAN NATIONAL/ILLINOIS ) AWARD NO. 83  
CENTRAL RAILROAD )

**STATEMENT OF CLAIM:**

Appealing the discipline of CN/IC Engineer Michael Knipp consisting of five (5) days actual suspension from August 27, 2014 through August 31, 2014 plus one (1) day for attending the August 12, 2014 investigation for the alleged violation of USOR - General Rule I - Duty Reporting or Absence, System Bulletin Notice No. 4 dated January 1, 2014 - AMC Guidelines, in connection with alleged information indicating that his absences 4/16/14, 4/24/14 and 6/22/14 when considered with other absences during the 12 weeks including and immediately preceding June 22, 2014 were in violation of the Attendance Guidelines.

**FINDINGS:**


Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.


We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. We see no reason to disturb the penalty deemed appropriate by the Carrier.

AWARD

Claim denied.

  
JACALYN J. ZIMMERMAN  
Neutral Member

  
JOHN K. INGOLDSBY  
Carrier Member

  
MARCUS RUEF  
Organization Member

Dated this *6th* day of *May*, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF )  
LOCOMOTIVE ENGINEERS )  
AND TRAINMEN )

vs. )

CANADIAN NATIONAL/ILLINOIS )  
CENTRAL RAILROAD )

CASE NO. 84  
AWARD NO. 84

**STATEMENT OF CLAIM:**

Appealing the discipline that was assessed to Engineer Michael Maura of five (5) days suspension (deferred) from July 9, 2014 through January 8, 2015 in connection with allegedly violating rules, regulations and/or policies in connection with AMC Attendance Guidelines, following an investigation that was held on Wednesday, July 2, 2014. The discipline letter dated July 9, 2014 written by Mark Hightower, Superintendent stated Engineer Maura's absences on May 2, May 7 and June 12, 2014 when considered with the 12 weeks including and immediately preceding June 12, 2014 may be in violation of requirements of the Attendance Guidelines.

In the second paragraph of Superintendent Hightower's discipline letter he stated "*the record contains credible testimony and substantial evidence proving that you violated USOR General Rule I—Duty Reporting or Absence.*" The letter closed with the following sentence – "*In consideration of the incident, the proven rule violations and your past discipline record, you are hereby assessed the following discipline.*"

**5 Days Deferred Suspension  
(July 9, 2014 through January 8, 2015)**

**FINDINGS:**

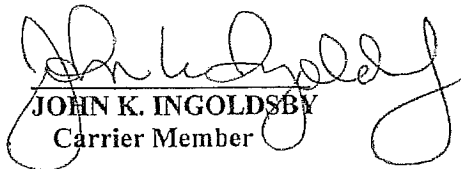
Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.


We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. We see no reason to disturb the penalty deemed appropriate by the Carrier.

AWARD

Claim denied.

  
MACALYN J. ZIMMERMAN  
Neutral Member

  
JOHN K. INGOLDSBY  
Carrier Member

  
MARCUS RUEF  
Organization Member

Dated this 6th day of May, 2016.

PUBLIC LAW BOARD NO. 7154

<b>BROTHERHOOD OF</b>	)	
<b>LOCOMOTIVE ENGINEERS</b>	)	
<b>AND TRAINMEN</b>	)	
	)	<b>CASE NO. 85</b>
<b>vs.</b>	)	<b>AWARD NO. 85</b>
	)	
<b>CANADIAN NATIONAL/ILLINOIS</b>	)	
<b>CENTRAL RAILROAD</b>	)	

**STATEMENT OF CLAIM:**

Claim of CN/IC Engineer Barry Cobb for reinstatement to service with seniority and vacation rights unimpaired, all notations of discipline assessed on October 3, 2014 expunged from his personal work record and compensation for all time lost as a result of same until the date he resumes service, plus out of pocket expenses for health and welfare and any other benefits which would be provided to him as a CN/IC Locomotive Engineer, for the alleged violation of CN/IC ABTH - Rule 300 - Train Handling General Procedures, ABTH - Rule 316 - Starting Train, USOR Rule 0104 - Duties of Train and Engine Crew Members and USOR Rule 0501 - Speed in connection with allegedly failing to comply with a 25 mph slow order that was on the TGBO at MP 786.4 - MP 786 on the McComb Sub at approximately 08:25 on September 04, 2014 while working as a crew member on C73971-04.

**FINDINGS:**

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

On or about September 5, 2014, the Carrier charged Engineer Barry Cobb (Claimant) to attend an investigation to determine the facts and determine his responsibility, if any, in connection with whether he violated any Carrier rules, regulations or policies by allegedly failing to comply with a 25 mile per hour slow order in effect on September 4, 2014, on the McComb Subdivision, when he was working as a crew member on C73971-04. Following the investigation, the Carrier found that Claimant had committed the misconduct alleged, in violation of ABTH—Rule 300—Train Handling General Procedures, ABTH—Rule 316—Starting Train, USOR—Rule

0104—Duties of Train and Engine Crew Members, and USOR—Rule 0501—Speed. Based upon the violations and Claimant's past discipline record, the Carrier dismissed him from service.

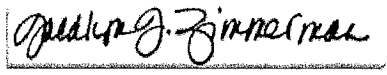
We have carefully reviewed the record in its entirety. At the time of the incident, Claimant's crew included a conductor and an engineer trainee, who was working under Claimant's supervision. There is no dispute that the trainee, at approximately 8:25 a.m., operated the train at a speed well in excess of the 25 mile per hour slow order which was in effect from Milepost 786.4 through 786 on the McComb Subdivision. The record is also clear that Claimant was aware of the slow order, which was contained in the crew's Tabular General Bulletin.

All three crew members admitted at the time that the incident occurred as alleged by the Carrier. Claimant, in a written statement, acknowledged that he was, along with the other crew members, accountable for the violation, especially because it was his responsibility to supervise the engineer trainee and he had not monitored him closely enough. The record, including Claimant's admissions, clearly supports the conclusion that the Carrier has met its burden of proving Claimant's guilt by substantial evidence.

However, we find, in the particular circumstances of this case, that the penalty of dismissal is too harsh. We therefore order Claimant reinstated, without backpay, and that his personal record be corrected accordingly.

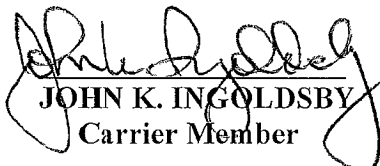
AWARD

**Claim sustained in accordance with findings. The Carrier is ordered to comply with this Award within 45 days.**



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JACALYN J. ZIMMERMAN  
Neutral Member



JOHN K. INGOLDSBY  
Carrier Member



MARCUS RUEF  
Organization Member

Dated this *23* day of *May*, 2016.

**PUBLIC LAW BOARD NO. 7154**

**BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS  
AND TRAINMEN**

**vs.**

**CANADIAN NATIONAL/ILLINOIS  
CENTRAL RAILROAD**

**CASE NO. 86  
AWARD NO. 86**

**STATEMENT OF CLAIM:**

Claim of CN/IC Engineer Bernard Cunningham for reinstatement to service with seniority and vacation rights unimpaired, all notations of discipline assessed on September 19, 2014 expunged from his personal work record and compensation for all time lost as a result of same until the date he resumes service, plus out of pocket expenses for health and welfare and any other benefits which would be provided to him as a CN/IC Locomotive Engineer, for the alleged violation of Canadian National/Illinois Central General Code of Operating Rule 528 - Automatic Warning Devices in connection with whether or not Engineer Cunningham violated any CN rules, regulations and/or policies when he allegedly failed to notify the RTC of the flashing power off light on the bungalow, indicating that the power was off at MP 20.38, Lake Cormorant, MS at approximately 1045 hours on Tuesday, August 26, 2014 while working as crew member on Assignment C 73892-25.

**FINDINGS:**

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Bernard Cunningham, was hired by the Carrier in 2006. On August 27, 2014, the Carrier notified Claimant to attend an investigation to develop the facts and determine his responsibility, if any, in connection with his alleged failure to notify Carrier Rail Traffic Control (RTC) of a flashing power off light on the bungalow at Milepost 20.38, Lake Cormorant, Mississippi, at approximately 10:45 hours on August 26, 2014, while he was working as the engineer on assignment C 73892-25. Following the investigation, the Carrier found Claimant guilty of the misconduct alleged, in

violation of USOR C—Alert and Attentive and USOR 528—Automatic Warning Devices, and dismissed him from service.

On the day at issue, Claimant was the engineer on C 73892-25. Trainmasters Joseph Brooks and Kevin McHone were conducting field efficiency testing by cutting the power to a bungalow at South Lake Cormorant Milepost 20.38. Cutting the power causes a light on the bungalow to start flashing, an indication that the power to the bungalow is out and running on backup batteries. Mr. Brooks explained that test's purpose is to ensure that the crews are alert and protecting the public, because if the power at a crossing goes out completely, the crossing will not activate, which could cause a major incident. USOR 528—Automatic Warning Devices, requires a crew to notify RTC when the employees encounter a flashing bungalow light. It is undisputed that at approximately 10:45 a.m., Claimant and his conductor came through the area and failed to report the flashing bungalow light.

Trainmaster Brooks testified at the investigation that after they cut the power, at about 8:30 a.m, he and Mr. McHone exited their vehicle and stepped back at increasing distances, of 400, 800 and 1000 feet, from different locations near the rail, to make sure that the light was flashing and visible, so the test would be fair. Mr. Brooks stated that it was overcast, but they could clearly see the flashing light at each of these distances.

Mr. McHone explained at the investigation that there was maintenance of way equipment around the Lake Cormorant crossing, and it looked like a tie gang would be working in the spur track off Lake Cormorant. There were two individuals working on the equipment, he stated, but the tie gang had not appeared at the time Claimant's train went through. No one was on or about the tracks. Mr. McHone explained that the equipment and the train, which was traveling south, were on the same side of the track, and the bungalow was on the other side, so there was nothing blocking the crew's view of the bungalow. He added that he and Mr. Brooks went out next to the sighting on the same side as the equipment to make sure they could see the flashing light.

Mr. McHone acknowledged that the crew could have been distracted by the equipment in the area. He stated, however, that it was their responsibility to pay attention to their surroundings and work safely.

Claimant's conductor testified at the investigation that he did not see the bungalow light flashing at the time in question. He stated that he always checks the lights, and always reports a flashing light. He acknowledged that it was his responsibility to watch everything around crossings, people and equipment, and to make sure that the train does not run a signal. He stated that he "just messed up" that day, and apologized for his mistake.

Claimant maintained at the investigation that he watched the bungalow as the train was coming across the area, and did not see the light flashing. He stated that there was track equipment present, and workers were on the machines getting ready to work. He added that there is another bungalow in front of the one with the signal indicator, and



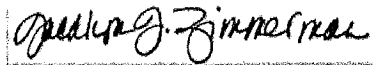
it hampers the view of the signal indicator. He also testified that he was carefully observing the signal at South Lake Cormorant, blowing the horn and ringing the bell, as required, and watching for cars entering the crossing. In addition, his conductor was in the process of releasing track authority, so they were engaged in a job briefing. The Organization entered into the record several photographs of the bungalow light, purportedly when it was flashing, and Claimant testified that he could not observe that in the photographs.

We have carefully reviewed the record in its entirety. There is no question that Carrier Officers were performing efficiency testing at the time of issue, and shut off the power to a signal bungalow, activating a flashing light. There is also no question that Claimant's train passed the bungalow without reporting the light as required by Carrier Rules.

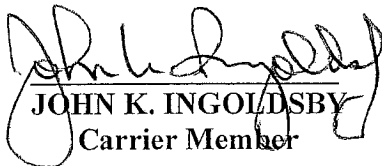
The Carrier's witnesses testified at length about the steps they took to ensure that the light would be visible from numerous locations so that it would be fair to expect Claimant to see it. Claimant and his conductor testified that they did not see the light, but the conductor acknowledged that it was his responsibility to be aware of everything happening in the area, and that he made a mistake in failing to observe the flashing light. Claimant testified to numerous distractions and obstructions, but none of those were any different than what he encountered on a regular, likely daily, basis, and it was his responsibility to operate safely in that environment. The Carrier has met its burden of proving, by substantial evidence that, on this occasion, he did not do so. Given the nature of the offense and Claimant's extensive disciplinary history, we cannot say that the Carrier's decision that dismissal was appropriate lacked just cause so as to be an unfair or arbitrary exercise of its discretion to determine penalties.

**AWARD**

**Claim denied.**



**JACALYN J. ZIMMERMAN**  
Neutral Member



**JOHN K. INGOLDSBY**  
Carrier Member



**MARCUS RUEF**  
Organization Member

Dated this *13<sup>th</sup>* day of *May*, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF )  
LOCOMOTIVE ENGINEERS )  
AND TRAINMEN )

vs. )

CANADIAN NATIONAL/ILLINOIS )  
CENTRAL RAILROAD )

CASE NO. 87  
AWARD NO. 87

STATEMENT OF CLAIM:

Appealing the Discipline Letters dated September 26 and 30, 2014 that were sent to Engineer Anne Panek following the investigation that was held on Friday, September 12, 2014 at the MIT Conference Room, 16800 South Center Street, Harvey, IL to develop the facts and determine responsibility, if any, and whether any Company rules, regulations and policies were violated in connection with an incident that occurred at approximately 2030 hours, August 31, 2014 at or near Harvey, IL, wherein Engineer Panek allegedly entered the main 2 track without permission from the RTC while working as a crew member on job assignment L53691-31. It should be mentioned that the disciplinary investigation held on September 12th served a dual purpose—as a disciplinary hearing and a Formal Certification Hearing for Engineer Panek in accordance with Code of Federal Regulations (49 CFR 240.307) and as a Formal Certification hearing for Conductor Mark Dawdy in accordance with the Code of Federal Regulations (459 CFR 242.401).

Engineer Anne Panek is charged with violating USOR—General Rule A—Safety, USOR General Rule W—Job Briefings, USOR—Rule 0100—Rules, Regulations and Instructions, USOR—Rule 0505—Changing Direction within Control Points or Interlockings and USOR—Rule 0900—Authority to Enter CTC Limits.

The letter went on to read:

In consideration of the incident, the proven rule violations, and your past discipline record you are hereby assessed the following discipline:

**30 Days Actual Suspension From Service  
(September 01, 2014 through September 30, 2014)**

**FINDINGS:**

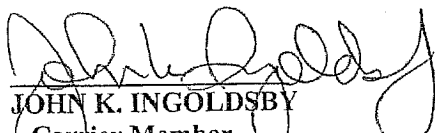
Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.


We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. We see no reason to disturb the penalty deemed appropriate by the Carrier.

**AWARD**

**Claim denied.**

  
JACALYN J. ZIMMERMAN  
Neutral Member

  
JOHN K. INGOLDSBY  
Carrier Member

  
MARCUS RUEF  
Organization Member

Dated this *6th* day of *May*, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF	)	
LOCOMOTIVE ENGINEERS	)	
AND TRAINMEN	)	
	)	CASE NO. 88
vs.	)	AWARD NO. 88
	)	
CANADIAN NATIONAL/ILLINOIS	)	
CENTRAL RAILROAD	)	

**STATEMENT OF CLAIM:**

Claim of CN/IC Engineer Steven Patterson for reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on October 20, 2014 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for the alleged violation of Canadian National/Illinois Central General Code of Operating Rule H--Furnishing Information and Conduct, in connection with whether or not Engineer Patterson violated any CN rules, regulations and/or policies when he allegedly falsified expense documents stating a mileage claim from Aulon, TN to Stevens Point, WI on Monday, September 1, 2014 and allegedly contacting the Country Inn and Suites on Saturday, September 6, 2014, checking into the hotel and not arriving resulting in the CN being charged for a room for 5 nights.

**FINDINGS:**

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Steven Patterson, had been employed by the Carrier since 2007. On October 20, 2014, following a hearing which was held *in absentia*, the Carrier dismissed Claimant for allegedly falsifying expense documents, including a mileage claim from Aulon, Tennessee to Stevens Point, Wisconsin, on September 1, 2014, and contacting a hotel on September 6, 2014, but not arriving, which resulted in the Carrier being charged for six nights' lodging. Carrier Trainmaster Gregory Beasley testified at the hearing that Claimant had called him and wanted to know why he was under investigation in connection with these matters.

Carrier Trainmaster Gregory Beasley testified at the investigation that Claimant had requested he approve a mileage claim for travel to Stevens Point, Wisconsin on September 1, 2014. Mr. Beasley stated that he questioned the claim as excessive, as Claimant had requested \$1926.24 for the trip, claiming that it was 1029 miles. Mr. Beasley introduced a Mapquest directions document showing that the actual mileage from Aulon, Tennessee to Stevens Point, Wisconsin is 630.90 miles. Mr. Beasley stated that he instructed Claimant to complete the request properly and resubmit it, but he did not do so.

Mr. Beasley stated that Claimant also told him he was staying at the Country Inn and Suites in Stevens Point, Wisconsin. Carrier officials contacted the hotel and learned that Claimant had called the hotel on September 6, 2014, and asked to be checked in, indicating that he would complete the paperwork and pick up his key upon arrival. However, by September 8, 2014, Claimant had not arrived at the hotel. Because he was holding a 59-day reservation, the Carrier was charged for five days of hotel charges.

We have carefully reviewed the record in its entirety. First, we find no procedural irregularity which denied Claimant his right to a fair and impartial investigation. The record indicates that he was aware of the investigation and did not respond to numerous attempts to secure his presence.

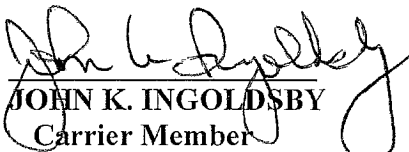
On the merits, the record shows that Claimant attempted to collect excessive mileage for a trip to Stevens Point, Wisconsin, and there is no evidence that he even made the trip at all, as he never arrived at the hotel in that city. Mr. Beasley testified without rebuttal that Claimant told him he was in the hotel, but the record shows he never arrived, with the result that the Carrier needlessly paid for five days' lodging. The Carrier's evidence was unrebutted, and it is sufficient to show, by substantial evidence, that Claimant falsified his travel as alleged. It is well established that such conduct is a basic violation of the employer-employee relationship which often justifies dismissal, even for a first offense. Given the nature of the violation and Claimant's personal record, we see no reason to disturb the Carrier's conclusion that dismissal was the appropriate sanction here.

AWARD

Claim denied.

  
\_\_\_\_\_

JACALYN J. ZIMMERMAN  
Neutral Member

  
\_\_\_\_\_  
JOHN K. INGOLDSBY  
Carrier Member

  
\_\_\_\_\_  
MARCUS RUEF  
Organization Member

Dated this *23<sup>rd</sup>* day of *May*, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF	)	
LOCOMOTIVE ENGINEERS	)	
AND TRAINMEN	)	
	)	CASE NO. 89
vs.	)	AWARD NO. 89
	)	
CANADIAN NATIONAL/ILLINOIS	)	
CENTRAL RAILROAD	)	

**STATEMENT OF CLAIM:**

Claim of CN/IC Engineer Steven Patterson for reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on October 20, 2014 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for the alleged violation of Canadian National/Illinois Central General Code of Operating Rule H-Furnishing Information and Conduct in connection with Engineer Patterson's alleged absence on September 9, 2014 when considered with other absences during the period of September 5, 2014 through September 9, 2014 that were allegedly in violation of requirements of the Attendance Guidelines of System Bulletin Notice No. 4 dated January 1, 2014 and U. S. Operating Rule I--Duty Reporting and Absence.

**FINDINGS:**

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Steven Patterson, had been employed by the Carrier since 2007. The Carrier notified Claimant to attend a formal investigation to develop the facts and determine his responsibility, if any, in connection with information indicating that his absences during the period of September 5, 2014 through September 9, 2014 might violate the Carrier's Attendance Guidelines. Following the investigation, which was held *in absentia*, the Carrier found that Claimant had committed the misconduct alleged, in violation of USOR Rule I—Duty—Reporting or Attendance, and dismissed him from service.

The Carrier's Attendance Guidelines provide, in relevant part:

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 absences 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 absences 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 absences, or 5) leaves a work assignment early without proper permission, the employee will be separately subject to disciplinary consequences after a single occurrence.

Carrier Trainmaster Gregory Beasley testified at the investigation that Claimant marked off personal business on September 5, 2014, contending that his son had been in an automobile accident. He was instructed by the Carrier's Attendance Management Center (AMC) to update his status within 24 hours. He did not do so, and was considered AWOL the next day, September 6, 2014. On September 7, 2014, Claimant called and marked off bereavement, asserting that his son had passed away that morning.

Mr. Beasley explained that employees are entitled to three days' bereavement depending upon the relationship to the individual who has passed away. The Carrier denied Claimant's request for bereavement because he failed to provide the required death certificate to support his request. Mr. Beasley explained that as a result of Claimant's two unexcused absences, on September 5 and 6, 2014, as well as his failure to call within 24 hours of marking off, put him in violation of the Attendance Guidelines.

We have carefully reviewed the record in its entirety. First, we find no merit to the Organization's procedural objections to the discipline assessed against Claimant. On the merits, the evidence is clear, and unrebutted, that Claimant failed to comply with the Carrier's Attendance Management Guidelines. Given Claimant's extensive record of attendance-related violations, we see no reason to disturb the dismissal deemed appropriate by the Carrier.

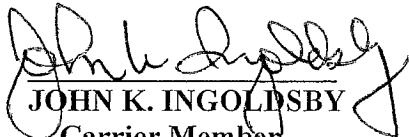


AWARD

Claim denied.

  
\_\_\_\_\_

JACALYN J. ZIMMERMAN  
Neutral Member

  
JOHN K. INGOLFSBY  
Carrier Member

  
MARCUS RUEF  
Organization Member

Dated this *23<sup>rd</sup>* day of *May*, 2016.

REC'D MAY 26 2016

PUBLIC LAW BOARD NO. 7154

<b>BROTHERHOOD OF</b>	)	
<b>LOCOMOTIVE ENGINEERS</b>	)	
<b>AND TRAINMEN</b>	)	
	)	<b>CASE NO. 90</b>
<b>vs.</b>	)	<b>AWARD NO. 90</b>
	)	
<b>CANADIAN NATIONAL/ILLINOIS</b>	)	
<b>CENTRAL RAILROAD</b>	)	

**STATEMENT OF CLAIM:**

Claim of CN/IC Engineer Steven Patterson for reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on October 20, 2014 expunged from his personal record and that he be compensated for all time lost from the date he was dismissed until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer in connection with whether or not Engineer Patterson violated any CN rules, regulations and/or policies when he allegedly failed to report for duty at Stevens Point, Wisconsin on Friday, September 5, 2014 as Engineer Trainee.

**FINDINGS:**

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Steven Patterson, had been employed by the Carrier since 2007. On September 9, 2014, the Carrier notified Claimant to attend an investigation to develop the facts and determine his responsibility, if any, in connection with his alleged failure to report for duty at Stevens Point, Wisconsin, on Friday, September 5, 2014 as an Engineer Trainee. Following the investigation, the Carrier found Claimant guilty of the charges, in violation of USOR I—Duty—Reporting or Absence—and dismissed him from service.

Claimant did not appear at the October 8, 2014 hearing. At the opening of the hearing, the Hearing Officer entered into evidence the original Notice of Investigation the Carrier sent to Claimant, along with several postponement notices addressed to him. The Organization representative acknowledged that he had received the notices and added that he had made several unsuccessful attempts to contact Claimant, including on the morning of the investigation.

Carrier Fulton, Kentucky Trainmaster Gregory Beasley testified at the investigation that Claimant was expected to report to Stevens Point, Wisconsin on September 4, 2015 to be marked up the next day. He had volunteered to work as a borrowed out engineer at that location, and, according to Mr. Beasley, had agreed to report on that date.

However, Mr. Beasley explained, there was no evidence that Claimant ever arrived at the Stevens Point hotel to which he had been instructed to report, as the hotel notified the Carrier that Claimant had called to state that he would collect his keys upon arrival on September 5, but, by September 8, 2014, had yet to check into the hotel.

Mr. Beasley added that Claimant's record shows him absent with official leave as of September 5, 2014, but, Mr. Beasley stated, he did leave a voicemail with the Carrier indicating that his son had been in a car accident. However, he did not call back to mark up within 24 hours as required. On September 7, 2015, Claimant called from Green Bay, Wisconsin and stated that his son had passed away. He was laid off bereavement on September 7, 2015, but never produced the death certification required to substantiate such a leave, so the leave was denied.

We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural violation which denied Claimant his right to a fair and impartial investigation. On the merits, the Carrier's evidence that Claimant did not appear for his assignment and failed to substantiate his request for bereavement leave is un rebutted. Therefore, his guilt has been proven by substantial evidence. Given the nature of the offense and Claimant's personal record, we see no reason to disturb the penalty deemed appropriate by the Carrier.

#### AWARD

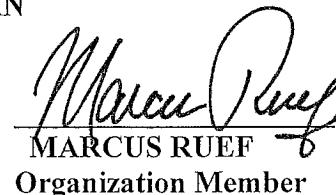
Claim denied.



JACALYN J. ZIMMERMAN  
Neutral Member



JOHN K. INGOLDSBY  
Carrier Member



MARCUS RUEF  
Organization Member

Dated this 23<sup>rd</sup> day of May, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF )  
LOCOMOTIVE ENGINEERS )  
AND TRAINMEN )  
vs. ) CASE NO. 91  
CANADIAN NATIONAL/ILLINOIS ) AWARD NO. 91  
CENTRAL RAILROAD )

STATEMENT OF CLAIM:

Appealing the sixty (60) days suspension consisting of a thirty (30) day actual suspension from service (October 29, 2014 through November 27 2014) and thirty (30) days deferred suspension (October 29, 2014 through October 28, 2015) that was assessed to Engineer Marsha Kelly following the investigation held on October 14,2014 to develop the facts and determine responsibility, if any, and whether any Company rules, regulations and policies were violated in connection with whether or not Engineer Kelly properly performed peer to peer before making a shove move at Reserve, LA at approximately 1345 on October 1,2014 while working 151671-01.

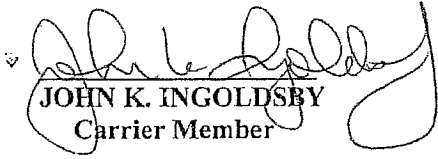
FINDINGS:


Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein. We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. We see no reason to disturb the penalty determined appropriate by the Carrier.

AWARD

Claim denied.

  
JACALYN J. ZIMMERMAN  
Neutral Member

  
JOHN K. INGOLDSBY  
Carrier Member

  
MARCUS RUEF  
Organization Member

Dated this *6th* day of *May*, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF	)	
LOCOMOTIVE ENGINEERS	)	
AND TRAINMEN	)	
	)	CASE NO. 92
vs.	)	AWARD NO. 92
	)	
CANADIAN NATIONAL/ILLINOIS	)	
CENTRAL RAILROAD	)	

**STATEMENT OF CLAIM:**

Claim of CN/IC Engineer Marsha Kelly for reinstatement to service for the alleged violation of Peer to Peer Guidelines before making a shove move at DuPont at approximately 0905 on October 28, 2014 while working L57371-28 with all notations of discipline expunged from Engineer Kelly's personal record and compensation for all time lost from the date she was removed from service on October 28, 2014 until the date she resumes service with an additional day for attending the investigation held on Friday, November 7, 2014, plus out of pocket expenses for health and welfare and any other benefits that would be provided to her as a CN/IC Locomotive Engineer.

**FINDINGS:**

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Marsha Kelly, had been employed by the Carrier for more than 19 years at the time of the incident. On November 14, 2014, following an investigation, the Carrier dismissed her from its employment, finding that she had violated Carrier rules, regulations and/or policies in connection with having failed to properly perform in accordance with Peer to Peer Guidelines before making a shove move at DuPont on October 28, 2014 while working as the engineer on assignment L57371-28.

The Carrier issued the Peer to Peer Guideline at issue on February 14, 2014. It provides, in relevant part:

## **11. SHOVING MOVEMENTS**

Conduct a job briefing between the engineer and crew member directing the shove and agree how the shoving movement will be made. Communication must include means of communication to be used, type of point protection, distance and direction.

### **EXAMPLE:**

1. Crew Member states via radio: **“CN 2641, conductor is on the point, you’re lined for track CS31 and okay to shove 20 cars.”**
  2. Engineer states via radio: **“CN 2641, conductor is on the point, lined for CS31, and we’re okay to shove 20 cars.”**
- Crew Member states via radio: **“that is correct.”**

Trainmaster Conan Michael Castellucci testified at the investigation that he was observing L573, Claimant’s train, at DuPont at the time of the incident. He observed the crew with binoculars and monitored the radio for Rules compliance.

Trainmaster Castellucci explained that the brakeman had counted Claimant down over the switch, and the conductor then took control of the movement and instructed her to back up three car lengths to a coupling. Claimant, he stated, repeated, “Three cars to a coupling.” Mr. Castellucci maintained that although the conductor gave Claimant all of the instructions required by the above-recited Peer to Peer Guideline, Claimant did not comply with its requirements, as she failed to repeat all of her conductor’s directions, particularly the one setting forth the type of point protection being provided.

Trainmaster Castellucci also maintained that he and Claimant spoke in his office following the incident, and she acknowledged that she had failed to repeat back the required instructions. He added that she told him she had focused on a new employee training with the crew, had a lot to keep up with and had simply forgotten.

Claimant testified at the investigation that she had been on this assignment for approximately 1½ years at the time of the incident. She testified that she was familiar with the applicable Peer to Peer Guideline, knew what was required and agreed it was important that the type of point protection be specified. Claimant stated that she had performed 20 to 30 shoves on the day at issue without any problem.

Claimant explained at the hearing that at DuPont the crew utilizes three types of protection: ground, riding the point, or advance of the movement. She maintained that she knew that they were using ground protection for the move at issue, and that she had repeated back the instructions the conductor had given her: ground protection, shoving three to a point, three to the coupling. She added that at DuPont, depending on the number of cars, she can usually see the point protection, but the crew still repeats it.

Claimant's personal record shows 30 day actual and 30 day deferred suspensions for a violation of the same Peer to Peer Guideline on October 1, 2014, which is before this Board in Case No. 91; a 10-day actual suspension for an operating violation on November 15, 2013; a five-day actual suspension for a derailment on April 19, 2012; and five other disciplinary events for operating failures from 1996 to 1998.

We have carefully reviewed the record in its entirety. First, we find no procedural irregularity which denied Claimant of her right to a fair and impartial investigation. On the merits, Trainmaster Castellucci testified that, during his efficiency testing, he heard that Claimant failed to repeat the type of protection as required, and that she had admitted her mistake during their conversation thereafter. While Claimant denies having made the error, the Hearing Officer's apparent resolution of this credibility conflict in favor of the Carrier is sufficient to meet its burden of proving Claimant's guilt by substantial evidence. However, we find, in the particular circumstances of this case, that the penalty was excessive, given the nature of the violation and Claimant's overall record. We reduce the discipline to a 60-day actual suspension, which will also activate the 30-day deferred suspension for the violation upheld by this Board in Case No. 91. The Neutral Chairman, in a bench Award dated December 21, 2015, ordered Claimant reinstated to her employment. We order Claimant made whole for her losses, in accordance with the usual practices in effect on this property, and that her personal record be corrected accordingly.

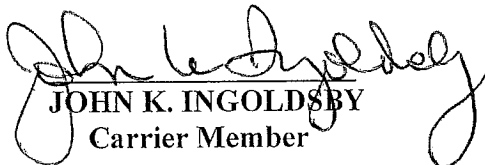
**AWARD**

**Claim sustained in accordance with Findings.**

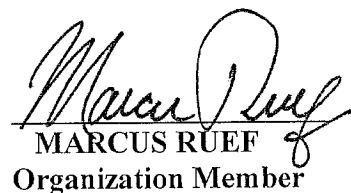


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**JACALYN J. ZIMMERMAN**  
Neutral Member



**JOHN K. INGOLDSBY**  
Carrier Member



**MARCUS RUEF**  
Organization Member

Dated this 23<sup>rd</sup> day of May, 2016.



PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF	)	
LOCOMOTIVE ENGINEERS	)	
AND TRAINMEN	)	
	)	CASE NO. 93
vs.	)	AWARD NO. 93
	)	
ILLINOIS CENTRAL RAILROAD	)	

STATEMENT OF CLAIM:

Appealing the (15) fifteen day (deferred) suspension assessed to CN/IC Railroad Engineer John McDonald on February 19, 2015 for the alleged violation of CN U.S. Operating Rules-General Rule I in connection with his allegedly missing a call as Engineer for assignment L54571-17. (This is the only information furnished in the discipline letter, assessing the penalty of 15 days deferred suspension).

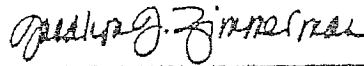
FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

We have carefully reviewed the record in its entirety. First, we find that Claimant was not denied his right to a fair and impartial investigation. While we do not sanction the lack of an incident date in the Investigation Notice, in this case it is apparent Claimant was aware of the specific incident at issue and had a full opportunity to prepare a defense, so he suffered no prejudice. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. We see no reason to disturb the penalty deemed appropriate by the Carrier.

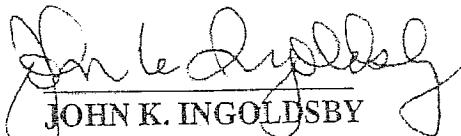
AWARD

Claim denied.



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JACALYN J. ZIMMERMAN  
Neutral Member

  
JOHN K. INGOLDSBY  
Carrier Member

Marcus J. Ruef  
Digitally signed by Marcus J. Ruef  
DN: cn=Marcus J. Ruef, o=BLET,  
ou=Vice President,  
email=mjruef@comcast.net, c=US  
Date: 2016.12.09 14:32:45 -06'00'

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MARCUS RUEF  
Organization Member

Dated this 9<sup>th</sup> day of DEC, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF	)	
LOCOMOTIVE ENGINEERS	)	
AND TRAINMEN	)	
	)	CASE NO. 94
vs.	)	AWARD NO. 94
	)	
ILLINOIS CENTRAL RAILROAD	)	

STATEMENT OF CLAIM:

Appealing the discipline of CN/IC Engineer Thomas McKinley of ninety (90) days actual suspension from service that was served November 2, 2014 through January 30, 2015, plus one (1) day for attending the November 19, 2014 investigation for the alleged violation of CN U.S. Operating Rules 710—Switches Run Through, Rule 0900—Authority to Enter CTC Limits in connection with an incident that occurred at approximately 1845 hours, November 1, 2014 at or near South Humboldt, MP 163.5 on the Champaign Subdivision wherein he allegedly passed a signal displaying a stop indication at approximately 1845 hours, November 1, 2014 at or near South Humboldt, MP 163.5 on the Champaign Subdivision.

FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. We see no reason to disturb the penalty deemed appropriate by the Carrier.

AWARD

Claim denied.

*Jacalyn J. Zimmerman*

JACALYN J. ZIMMERMAN  
Neutral Member

*John K. Ingoldsby*  
JOHN K. INGOLDSBY  
Carrier Member

Marcus J. Ruef

Digitally signed by Marcus J. Ruef  
DN: c=Marcus J. Ruef, o=BLET,  
ou=Vice President,  
email=mjruef@comcast.net, c=US  
Date: 2016.12.09 14:34:20 -06'00'

MARCUS RUEF  
Organization Member

Dated this 9<sup>th</sup> day of DEC, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF )  
LOCOMOTIVE ENGINEERS )  
AND TRAINMEN )  
vs. )  
ILLINOIS CENTRAL RAILROAD )

CASE NO. 95  
AWARD NO. 95

STATEMENT OF CLAIM:

Claim of CN/IN Engineer Shawn Muller for removal of a Reprimand and payment for one (1) day attending the investigation held on December 14, 2014 for the alleged violation of USOR General Rule I—Duty Reporting or Absence in connection with allegedly violating CN rules, regulations and/or policies in connection with absences on 10/12/14, 10/20/14, 11/02/14, 11/18/14, and 11/19/14 which may be in violation of requirements of the Attendance Guidelines.

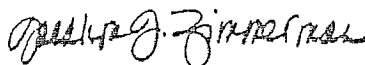
FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. We see no reason to disturb the penalty deemed appropriate by the Carrier.

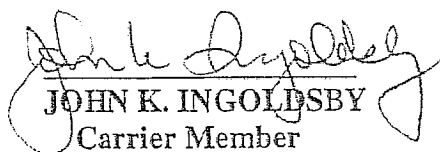
AWARD

Claim denied.



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JACALYN J. ZIMMERMAN  
Neutral Member



JOHN K. INGOLFSBY  
Carrier Member

Marcus J. Ruef

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DN: cn=Marcus J. Ruef, o=BLET,  
ou=Vice President,  
email=mjruef@comcast.net, c=US  
Date: 2016.12.09 14:35:57 -0600'

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MARCUS RUEF  
Organization Member

Dated this 9<sup>th</sup> day of DEC, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF	)	
LOCOMOTIVE ENGINEERS	)	
AND TRAINMEN	)	
	)	CASE NO. 96
vs.	)	AWARD NO. 96
	)	
ILLINOIS CENTRAL RAILROAD	)	

STATEMENT OF CLAIM:

Claim of CN/IN Engineer Shawn Muller for removal of five (5) day suspension (deferred) November 30, 2014 through November 29, 2015 and one (1) day for attending the investigation held on December 10, 2014 for the alleged violation of USOR General Rule I--Duty Reporting or Absence in connection with whether or not he missed a call for assignment L54571-17. (No date mentioned).

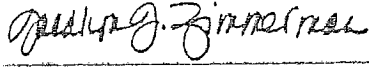
FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. We see no reason to disturb the penalty deemed appropriate by the Carrier.

AWARD

Claim denied.

  
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JACALYN J. ZIMMERMAN  
Neutral Member

  
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JOHN K. INGOLDSBY  
Carrier Member

Marcus J. Ruef

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ou=Vice President,  
email=mjruef@comcast.net, c=US  
Date: 2016.12.09 14:37:07 -06'00'

\_\_\_\_\_  
MARCUS RUEF  
Organization Member

Dated this 9<sup>th</sup> day of DEC, 2016.



PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF	)	
LOCOMOTIVE ENGINEERS	)	
AND TRAINMEN	)	
	)	CASE NO. 97
vs.	)	AWARD NO. 97
	)	
ILLINOIS CENTRAL RAILROAD	)	

STATEMENT OF CLAIM:

Appealing the discipline that was assessed to Engineer Daniel Shepard of twenty (20) days suspension that began February 3, 2015 and will end after February 22, 2015 in connection with allegedly violating rules, regulations and/or policies in connection with his alleged absence on 10/02/13, 10/30/14 and 12/11/14 when considered with other absences during the 12 weeks including and immediately preceding December 11, 2014 that were allegedly in violation of the requirements of Bulletin Notice No. 4—Attendance Guidelines for Unionized Employees and U.S. Operating Rule I—Duty Reporting and Absence.

FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. We see no reason to disturb the penalty deemed appropriate by the Carrier.

AWARD

Claim denied.

*Jacalyn J. Zimmerman*

JACALYN J. ZIMMERMAN  
Neutral Member

*John K. Ingoldsbey*  
JOHN K. INGOLDSBY  
Carrier Member

Marcus J.  
Ruef

Digitally signed by Marcus J. Ruef  
DN: cn=Marcus J. Ruef, o=BLET,  
ou=Vice President,  
email=mjruef@comcast.net, c=US  
Date: 2016.12.09 14:38:15 -0600

MARCUS RUEF  
Organization Member

Dated this *9<sup>th</sup>* day of *DEC*, 2016.

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF	)	
LOCOMOTIVE ENGINEERS	)	
AND TRAINMEN	)	
	)	CASE NO. 98
vs.	)	AWARD NO. 98
	)	
ILLINOIS CENTRAL RAILROAD	)	

**STATEMENT OF CLAIM:**

Reinstatement of Jake Rush to service with all contractual and 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 date he was removed from service (January 21, 2015) until the date he resumes service, including costs for Health & Welfare and restoration of all vacation entitlements as a result of same, plus one additional day for attending the February 5, 2015 investigation.

**FINDINGS:**

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Jake Rush, had been employed by the Carrier since 2004. On February 19, 2015, following an investigation, the Carrier dismissed Claimant for violating numerous Carrier Rules in connection with whether he obtained required information before making a shove move on January 21, 2015 while working as a crew member on R99071-21.

On the day of the incident, two Carrier Officers were conducting efficiency testing on crews on or around the Yazoo subdivision. Safety Officer Strong testified at the investigation that they were ensuring that ground and engine crews engaged in proper communication before making a shove move. They directed Claimant's conductor to omit required information from his instructions to Claimant to see if Claimant would request it before proceeding with the shove.

As directed, the conductor stated only, "Shove six cars," rather than using the train's identifying information, describing the distance to be shoved, describing the positions of any switches or derails, and indicating who would protect the shove and the manner of protection provided.

Claimant did not request any of this information, simply repeating, "Shove back six cars." Mr. Strong then boarded the locomotive and informed Claimant of the efficiency test failure. He testified that Claimant told him he had become comfortable with his crew and trusted them, but recognized that the comfort did not exempt him from full compliance with the Rules. Claimant, he stated, took full responsibility for his mistake.

Mr. Strong also testified that Claimant had failed the same rule on an earlier test, and he coached Claimant on the necessity of compliance, giving him the opportunity to correct his behavior. However, on this retest, he had the same failure. Mr. Strong stated that Claimant created a hazardous situation by failing the same rule twice.

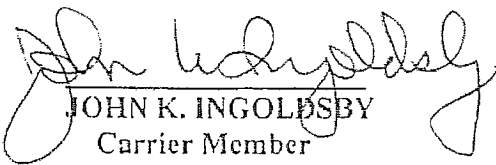
Claimant acknowledged at the hearing that during the move at issue the conductor did not state how the point was protected, and he did not ask for that information. He also admitted that the conductor did not provide the train's initials and engine number, and he did not request that information. Claimant admitted that he was required to do so.

We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, there is no dispute that Claimant failed to comply with important Carrier Rules during an efficiency testing operation. He also did not deny that he had failed the same Rules on previous testing and had been coached regarding the need to improve. Given these failures and Claimant's overall record, we cannot say that the Carrier exceeded its discretion in determining that very serious discipline was warranted. However, we find, under the particular circumstances of this case, that permanent dismissal is too harsh, and order Claimant reinstated, without backpay. His personal record shall be corrected accordingly.

AWARD

Claim sustained in accordance with Findings. The Carrier is directed to comply with this Award within 45 days.

  
JACALYN J. ZIMMERMAN  
Neutral Member

  
JOHN K. INGOLFSBY  
Carrier Member

Marcus J. Ruef  
Digitally signed by Marcus J. Ruef  
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President, email=mruef@comcast.net, c=US  
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MARCUS RUEF  
Organization Member

Dated this 9<sup>th</sup> day of DEC, 2016.



PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF	)	
LOCOMOTIVE ENGINEERS	)	
AND TRAINMEN	)	
	)	CASE NO. 99
vs.	)	AWARD NO. 99
	)	
ILLINOIS CENTRAL RAILROAD	)	

STATEMENT OF CLAIM:

Claim of CN/IN Engineer Marcus Williams for removal of 50 days actual suspension consisting of (February 12, 2015 through February 26, 2015 and 30 Days (deferred) suspension served (February 12, 2015 through February 22, 2016). General Superintendent Noland's February 12, 2015 letter that was sent certified mail to Engineer Marcus Williams also included a paragraph stating:

A review of Marcus Williams' personal work record indicates that on September 8, 2014 he was assessed 5 days suspension, which was deferred for one year. Therefore, in addition to the discipline he was assessed for the incident described above he was required to serve the deferred suspension. His total suspension was from February 12, 2015 through March 3, 2015.

Plus we are claiming payment for one (1) day attending the investigation held on January 2, 2015 for the alleged violating of the Attendance Guidelines in connection with his alleged absence on December 18, 2014 when considered with other absences during the 12-week period prior to December 18, 2014. The December 26, 2014 charge letter was followed by additional letters dated December 26, 29, 2014 and January 5, 2015 all written by Maurice Floyd, Trainmaster.

FINDINGS:

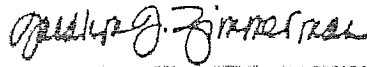
Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway

Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. We see no reason to disturb the penalty deemed appropriate by the Carrier.

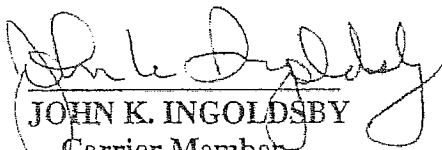
AWARD

Claim denied.



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JACALYN J. ZIMMERMAN  
Neutral Member



JOHN K. INGOLDSBY  
Carrier Member

Marcus J. Ruef

Digitally signed by Marcus J. Ruef  
DN: cn=Marcus J. Ruef, o=BLET, ou=Vice  
President, email=mjruef@comcast.net, c=US  
Date: 2016.12.09 14:40:53 -0600

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MARCUS RUEF  
Organization Member

Dated this 9<sup>th</sup> day of DEC, 2016.



PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF	)	
LOCOMOTIVE ENGINEERS	)	
AND TRAINMEN	)	
	)	CASE NO. 100
vs.	)	AWARD NO. 100
	)	
ILLINOIS CENTRAL RAILROAD	)	

STATEMENT OF CLAIM:

We respectfully request that the Carrier reverse its error and correct this grave injustice by reinstating Engineer Richard Stasiak [to] service with all seniority rights unimpaired, all notations in connection with his discipline be removed from his personal work record and that he be compensated for all time lost from the day he was dismissed (June 15, 2015), until the date he resumes service, including costs for health and welfare and restoration of all vacation entitlements as a result of same, plus the loss of earnings due to his attending the June 2, 2015 investigation.

FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Richard Stasiak, had been employed by the Carrier since 2011. On June 15, 2015, following an investigation, the Carrier dismissed Claimant for violating numerous Carrier Rules when, on May 21, 2015, he shoved through a bumping post, causing the derailment of two cars.

On the day of the incident, Claimant was the engineer on assignment R92391-20, working at Kinder Morgan on the Joliet Subdivision. His crew included a conductor and a brakeman. It is not in dispute that Claimant was shoving loaded denatured alcohol cars into a track known as one siding, when he shoved through a bumping post at the end of that track, pushing it off the track and across onto another one. Two cars derailed, with resulting damage.

Trainmaster Allan Danielwicz investigated the incident and testified at the investigation; the brakeman and conductor also testified. The crew was spotting cars into one siding, and Claimant was making a southward shove. The brakeman gave Claimant a 15-car count to initiate the shove. The conductor then took over and gave Claimant an eight-car count, and then a four-car count; Claimant responded appropriately to both. After the four-car count, the conductor gave a two-count and attempted to stop the movement by stating, multiple times, "Stop, that will do," but Claimant did not respond. The movement continued, and the download of the incident showed that Claimant continued to shove for 16 seconds after the movement had been stopped.

Mr. Danielwicz testified that following the incident he asked Claimant, several times, to see his cell phone, because he wanted to ensure that Claimant had not missed the two-car count and stop instructions because he had been distracted. Mr. Danielwicz stated that Claimant refused to show him the phone. Claimant did not rebut this testimony at the investigation.

Claimant maintained that the button on his radio stuck and he did not hear anything after the conductor gave him the four-car count. He acknowledged that the applicable Carrier rule required him to stop within one-half the last distance specified unless additional instructions were received, and that he did not stop after the conductor's last instruction, although he maintained he began to slow down.

Claimant's conductor testified that he did not hear the radio button stick, although Claimant told him it had. Claimant testified that he showed the conductor the stuck button, but the conductor was not asked, at the hearing, to confirm Claimant's assertion.

We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the essential fact—that Claimant failed to stop as instructed and a derailment ensued—is not in dispute. We conclude that the Carrier has demonstrated, by substantial evidence, that Claimant was, as Mr. Danielwicz suspected, distracted, likely by his cell phone, and therefore bears responsibility for the incident.


Claimant's excuse that his radio's button was stuck was not confirmed by his conductor, and, as Claimant admitted, would not in any event excuse his failure to stop within half the distance of his previous instruction, the four-car count. The download's confirmation that Claimant continued to shove after the movement had stopped contradicts his assertion that he began to slow down after he heard the four-car count. Moreover, and most significantly, Claimant did not deny that he refused to turn over his cell phone for inspection. These factors strongly indicate that Claimant was likely distracted and his lack of attention was the cause of the accident. His guilt has been proven by substantial evidence.

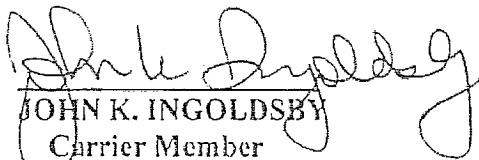
While the Organization argues that Claimant's minimal disciplinary record, consisting only of one attendance violation, mitigates against dismissal for a first operating offense, we agree with the Carrier that this violation is serious enough to justify

dismissal. It is beyond obvious that operating a train while distracted can have catastrophic consequences, and this should have been well known to Claimant. The fortunate fact that this incident did not have such consequences does not mitigate the seriousness of his offense. We see no reason to disturb the Carrier's conclusion that dismissal was warranted.

AWARD

Claim denied.

  
JACALYN J. ZIMMERMAN  
Neutral Member

  
JOHN K. INGOLDSBY  
Carrier Member

Marcus J. Ruef

Digitally signed by Marcus J. Ruef  
DN: cn=Marcus J. Ruef, o=BLET, ou=Vice  
President, email=mjruef@comcast.net, c=US  
Date: 2016.12.09 14:42:21 -0500

MARCUS RUEF  
Organization Member

Dated this 9<sup>th</sup> day of DEC, 2016.