

AWARD NO. 11
Case No. 11

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

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. 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.

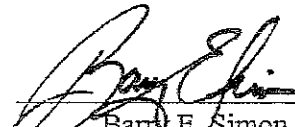
As a result of this incident, Claimant and his conductor were directed to attend a formal investigation at which they were charged with damaging the locomotive and railcar. Following the investigation, Claimant was issued a thirty day suspension.

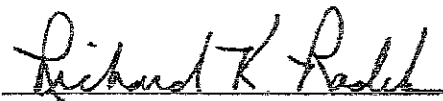
We have reviewed the record of the investigation and conclude that the discipline cannot be supported. Prior to making the shoving move, Claimant's conductor ascertained that the movement would stay within the track capacity and that the switches were all lined for the movement. Thereafter, the conductor 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.

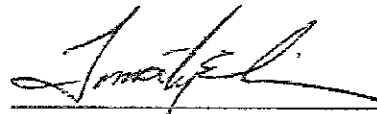
The Carrier rests its case on the rules regarding shoving movements and the requirement for C.R.S. (Coverage, Route and Shove). Coverage, under this rule, requires that a crew member be on the leading end of the movement or in a position to clearly see the leading end of the movement. Route refers to 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