

**PUBLIC LAW BOARD NO. 7154**

**PARTIES TO THE DISPUTE:**

**Brotherhood of Locomotive Engineers and Trainmen**

**and**

**Canadian National/ Illinois Central Railroad**

**STATEMENT OF CLAIM:**

**Claim of CN/IC Engineer Dennis Harnisch for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on April 15, 2016. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of U.S. System Special Instructions - #03 – Defect Detectors (e), Integrity Failure/No Message or incomplete Message.**

**OPINION OF BOARD:**

On March 20, 2016, the date of the incident precipitating this claim, Engineer Dennis Harnisch (Claimant) was assigned as an engineer on assignment A49891-20. As part of an efficiency test, a Carrier manager went to the “defect” or “hot box” detector at Milepost 119.1 at or near Champaign, Illinois, to turn off the radio equipment. Special instruction System Special Instruction #3 requires a crew to notify Radio Traffic Control (RTC) of the result of the detector’s inspection or if no message is received. The Carrier determined that Claimant’s train passed the detector without noting there was no message received and, thus, failed to notify RTC. As a

consequence, on March 23, 2016, the Carrier sent Claimant a Notice of Investigation (NOI) requiring him to report for a formal investigation into the following matter:

...to develop the facts and determine your responsibility, if any, in connection with an incident that occurred at approximately 1515 hours, March 20, 2016 at or near MP 119.1 on the Chicago Subdivision, wherein you allegedly failed to report to the RTC that no message was received after passing defect detector while working as a crew member on job assignment A49891-20, and whether you violated any Company rules, regulations and/or policies in connection with the incident.

The formal investigation was held on March 31, 2016. Following the investigation, in a letter dated April 15, 2016, the Carrier sent Claimant a notice of discipline stating that he had been found guilty as charged and was assessed the penalty of dismissal from Carrier's service as of that date. The Organization filed a claim on Mr. Harnisch's behalf on May 2, 2016. That claim was denied by the Carrier in a letter dated July 6, 2016. The matter was then progressed in the customary manner in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute. It is properly before the Board for adjudication.

The Carrier maintains that the testimony on the transcript of the formal investigation and the documentary evidence presented conclusively show that Claimant is guilty of the charges leveled against him. It points out that a first-hand Carrier witness confirmed that Claimant and his Conductor failed to report to RTC that there was no message received from the defect detector. The Carrier also notes that failure to make such a report could have dire consequences, including danger to equipment and employees, because operational defects would go unnoticed until too late. The Carrier urges that, based upon Claimant's violation and his past record, the discipline assessed was warranted.

The Organization protests that the Trainmaster performed the safety test alone, so there

are no corroborating witnesses to confirm he actually turned off the radio at the defect detector box in question. It also notes that Claimant and the Conductor testified consistently that the crew did not ignore the detector but received a signal and proper car count indicating no problem at that point. Accordingly, there was no reason to notify RTC. In addition, there was no documentation from the RTC confirming that the detector radio was not giving feedback at the time of the incident in question. The Organization insists that there was insufficient proof on this record to support a conviction of guilt and asks that the claim be sustained in its entirety.

The Board has carefully reviewed the transcript of the formal investigation and the documentary evidence attendant thereon. At bottom line, although his testimony is somewhat convoluted, it appears that probability favors the hearing officer's ultimate conclusion that the Trainmaster did, in fact, perform the test in question. In light of that, some discipline of Claimant was warranted. However, Claimant's record is not a particularly bad one, with one discipline for a safety violation approximately six months prior to this incident (Claimant signed a waiver of investigation) and one before that more than 3½ years prior to the incident at issue. After due consideration of all the evidence presented by the Board, and without precedent for similar cases of this nature, the Board finds that Claimant shall be returned to work without back pay, but with all other rights and privileges intact.

AWARD

Claim sustained only to the extent set forth in the foregoing Opinion.

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Marcus J. Ruff*  
Organization Member

*John L. Dwyer*  
Carrier Member

Dated April 17, 2018