

AWARD NO. 19  
Case No. 19

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

**PUBLIC LAW BOARD NO. 7154**

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

STATEMENT OF CLAIM:

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

FINDINGS:

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

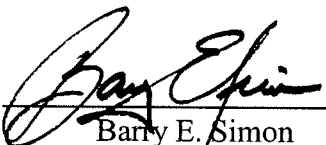
While Claimant was working as engineer on Assignment M30271-29 on the McComb Subdivision on February 28, 2008, an FRA Inspector was being escorted by Track Inspector Doug

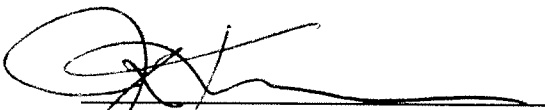
Sicks in the vicinity of Wesson Junction. The FRA Inspector informed Sicks that he wanted to do a whistle test on a train at a location other than a road crossing. The two men, therefore, positioned themselves on opposite sides of the track near the fixed signal at the junction. Claimant, who was traveling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

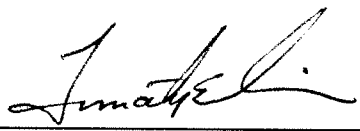
There is no question that Claimant did not sound his horn where the inspectors were standing. Rule 410.6 requires the engineer to sound the horn when approaching roadway workers or equipment on or near the track. Claimant's explanation for not sounding the horn was that he did not see the men. Track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

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

AWARD: Claim denied.

  
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Barry E. Simon  
Chairman and Neutral Member

  
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J. R. Koonce  
Employee Member

  
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Timothy E. Rice  
Carrier Member

Dated: December 2, 2009  
Arlington Heights, Illinois