

PUBLIC LAW BOARD NO. 7154

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Canadian National/ Illinois Central Railroad

STATEMENT OF CLAIM:

Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Robert Marshall March 15, 2017, following the formal investigation held on March 15, 2017. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for all time lost, restoration of all railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other employment related benefits, that he would have received while in active service.

OPINION OF BOARD:

On February 16, 2017, Engineer Robert Marshall (Claimant) was working as the engineer on Job JA48871-05 in the Jackson Yard. The crew were performing switching maneuvers when Claimant's locomotive traveled through a derail on the North Lead, resulting in the derailment of, and damage to, locomotive GTW 5822. The Carrier sent Claimant a Notice of Investigation on February 17, 2016, in which it instructed him to appear for a formal investigation into the following:

...to develop the facts and to determine your responsibility, if any, in connection with whether or not you ran over a derail on the North Lead which resulted in damage and derailment of GTW 5822 at approximately 01:55 hours on February 16, 2017 while working as a crew member of JA4887-15, and whether you violated Company rules, regulations and/or policies in connection with the incident....

An investigation was held on March 2, 2017. Subsequent to the investigation, in a letter dated March 15, 2017, the Carrier notified Claimant that he had been found guilty as charged and was assessed the penalty of dismissal from Carrier's service. The Organization filed an appeal on Mr. Marshall's behalf on April 25, 2017, in which it protested the discipline assessed. That appeal was declined by the Carrier on June 21, 2017. The matter was then progressed in accordance with the Parties' Agreement, after which it remained unresolved. It is properly before the Board for adjudication.

The Carrier maintains that Claimant had a fair hearing and that it is clear on the record that Claimant was culpable for the locomotive going through the derail. It asserts that Carrier witnesses confirmed the events leading to the derail. Furthermore, the Claimant admitted that he had been looking away from the direction of travel, and was unable to stop within one-half the distance of his range of vision. The Carrier also argues that operating "long hood forward" is not an excuse for not adhering to the reasonable safety requirements of being able to stop before running through the derail, which he know was ahead of him. In light of his generally poor safety record, the Carrier insists that dismissal was appropriate in this case.

The Organization points out that Claimant was truthful during the hearing regarding the events leading to the derailment. Moreover, it protests he did not hear his conductor say, "that will do" to indicate he should stop his engine short of the derail. The Organization also maintains that Claimant stopped immediately upon seeing the derail, which, according to the

statement read into the record by Claimant's representative was very hard to see. The Organization insists that statement, made by a fellow engineer, demonstrates that the flag indicating the upcoming derail was hard to see at night and the derail itself was rusted, making it also difficult to see. Finally, the Organization points out that contributory to the problem was the inadequate functioning of the Claimant's radio.

The Board has reviewed with care the record in this case, including the transcript and the attendant documentary evidence. There is no confirmation on the record that, had the Claimant been looking forward in the direction of travel, he would not have been able to see the flag for the derail or the derail itself. Claimant's own admission of looking away from the direction of travel confirms his predictable inability to see the warning flag or the derail in order to stop in time, irrespective of their alleged "reduced visibility" or "rust". Under the circumstances, and in view of Claimant's prior discipline record, we find no basis upon which to overturn Carrier's assessment of discipline in this case.

AWARD

Claim denied.

Elizabeth C. Wesman

Elizabeth C. Wesman, Chairman

Maxim J. Quispel

Organization Member

John H. Lyddell

Carrier Member

Dated April 17, 2018