

**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 Matthew Hudgins on October 26, 2016, following the formal Investigation held on October 13, 2016. 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 October 3, 2016, the date of the incident leading to the above claim, Engineer Matthew Hudgins (Claimant) was assigned as the engineer on Train M39671-3, operating on Carrier's Fulton Subdivision. The Fulton line segment passes through territory designated as a High Threat Urban Area (HTUA). An HTUA requires lower speed limits for trains carrying hazardous material lading. By letter of October 3, 2016, the Carrier sent Claimant a Notice of Investigation (NOI) requiring him to appear for a formal investigation. The NOI read in pertinent part as follows:

...The investigation is being held to develop the facts and to determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies when the engineer failed to control the speed of the train and exceeded the maximum authorized speed...of the train within the HTUA on the Fulton Subdivision between mp 387.9 and 369.4 at approximately 0615 hours, on Monday, October 3, 2016 while working as [a crew member] on assignment M 39671-03.

A formal investigation was held on October 13, 2016. Subsequent to the investigation the Carrier sent Claimant a letter on October 26, 2016, informing him that he had been found guilty of violating "System Special Instructions Page 13, Equipment Restrictions as per updated Region Quarterly Bulletin Reissue dated February 22, 2016, US Hazmat Instructions, Page 34, Item b, and CN Timetable Central Division #7 Fulton Subdivision Page 42," and was assessed the penalty of dismissal from Carrier's service. The Organization filed a claim on Mr. Hudgins behalf and the Carrier denied that claim. The matter was then progressed in accordance with the Parties' Agreement, including conference on the property, after which it remained in dispute. It is properly before the Board for resolution.

The Carrier contends that oral testimony and documentary evidence on the record support a finding of Claimant's guilt. It notes that there is no reasonable doubt that, in light of that testimony and evidence, Claimant exceeded the speed limit between Mile Post 387.9 and Mile Post 369.4 on the date in question. The Carrier also insists that a review of Claimant's personal file reveals that in his relatively short tenure he has a poor safety record, including one prior dismissal and leniency reinstatement. In sum, the Carrier urges that the claim be denied in its entirety.

The Organization points out that even if Claimant were exceeding the speed limit,

there was no resulting accident or injury. It asserts that there was no visible indication that the track length in question was an HTUA area. The Organization also points out that the Conductor on Claimant's train received only a 30-day actual suspension, which indicates that Claimant received disparate and prejudicial treatment. Accordingly, the Organization urges that the claim be sustained or, at a minimum, the penalty reduced.

The Board has reviewed the testimonial evidence gathered at the formal investigation as well as the documentary evidence presented – including the objective data downloads from Claimant's train (Tr. pp. 19-40). We note that Claimant admitted he was speeding in the area at issue, and offered no explanation for his conduct. He also testified that he had in his possession copies of the relevant rules and regulations regarding his responsibilities as Engineer on that particular section of track. Moreover, he had just been reinstated by Carrier on a leniency basis after a dismissal for a safety violation fewer than three months prior to the incident leading to this claim.

In light of the foregoing, it is clear to the Board that Claimant was not warned or chastened by the prior dismissal and leniency reinstatement. The Organization's argument that no one was injured and no accident occurred because of Claimant's speeding violation does not excuse behavior that could very well lead to such results. Nor do we find that the fact that the Conductor received a lesser penalty, *per se* indicates disparate treatment. The Conductor has a nearly unblemished discipline record – in contrast to the Claimant. Under the circumstances, the Board finds no basis upon which to overturn the Carrier's assessment of discipline.

AWARD

Claim denied.

*Elizabeth C. Wesman*

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Elizabeth C. Wesman, Chairman

*Marcus J. Dwyer*  
Organization Member

*John B. Dwyer*  
Carrier Member

Dated April 17, 2018