

**PUBLIC LAW BOARD NO. 7154**

**PARTIES TO THE DISPUTE:**

**Brotherhood of Locomotive Engineers & Trainmen**

**and**

**Illinois Central Railway Company**

**STATEMENT OF CLAIM:**

**Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Gary Lloyd on July 24, 2017, following the formal investigation held on July 11, 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, which he would have received while in active service.**

**OPINION OF BOARD:**

On June 22, 2017, the Carrier sent Engineer Gary Lloyd (Claimant) a Notice of Investigation (NOI) directing him to report for a formal investigation for the following purpose:

...to develop the facts and to determine your responsibility, if any, and whether you violated any Company rules, regulations and/or policies, in connection with your alleged conduct unbecoming when you called the crew on Thursday, June 22, 2017, at approximately 0634 hours.

The formal investigation was held on July 11, 2017. Following the investigation, in a letter dated July 24, 2017, the Carrier notified Claimant 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. Lloyd's behalf on August 1, 2017. The Carrier denied that claim on September 29, 2017. 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 adjudication.

The Carrier maintains that it has presented sufficient evidence on this record, including the recording of Claimant's message left for the crew callers on the date in question, to support a finding of guilt. It also notes that Claimant admitted leaving the message "with foul and inappropriate language" on the crew callers' voice mail. The Carrier further asserts that Claimant was afforded a full and fair investigation, including granting of the requested postponements. Finally, the Carrier insists that the discipline assessed was reasonable and justified. It points out that Claimant is a six-year employee with a poor discipline record, including a leniency reinstatement for a Rule G violation, in which he signed a waiver and entered into a Leniency Reinstatement Agreement. Under the circumstances, the Carrier asks that the instant claim be dismissed in its entirety.

The Organization contends that by splitting the two related events – the missed call and leaving an abusive message on the crew callers' voice mail – the Carrier set the Claimant up for double jeopardy. It asserts that the second hearing, following the day after the first hearing was merely a pretext for a fair investigation and the hearing officer had already prejudged Claimant's case. The Organization also points out that such language is part of the industry "back-and-forth" and is certainly not a dismissible offense. In support of its position, it cites PLB 7704, Award No. 53 (Campagna). The

Organization asks that, as in that case, Claimant's discipline be reduced, or the claim be sustained in its entirety.

The Board has reviewed the facts and testimony in this case with care. We do not find, as the Organization alleges, that the transcript of the second hearing (the one concerning Mr. Lloyd's phone call to the crew callers), supports a finding of bias on the hearing officer's part. The offense in this case may have been sequential to, but is not identical to, the missed call and involves Claimant's personal behavior towards fellow employees. However, testimony on this record indicates that, in general, Claimant has been a good employee, and there is no evidence that he has violated any of the clear terms of his leniency reinstatement. Moreover, there is some indication that, based upon his long service with another Carrier before joining the present one, this Carrier has chosen Claimant for special responsibilities in light of his skills as an engineer. With that said, however, there can be no excuse for leaving an abusive message (See Tp. p. 11) for employees who may or may not have had anything to do with the Carrier's initial inability to contact Claimant on the date in question (See Award No. 236 on this Board).

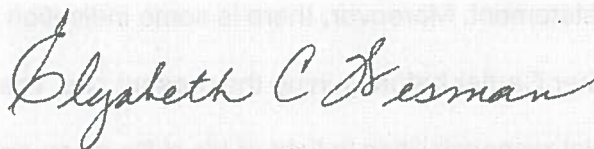
In the unique circumstances of this case, and without precedent for future similar cases that may arise, the Board finds that Claimant shall be returned to service, without back pay, but with all other rights and privileges intact. Claimant should be cautioned, however, that the verbal behavior precipitating this case is not mere "shop talk" but is utterly unacceptable from any employee with respect to his fellow employees, and his future behavior should be guided accordingly.

AWARD NO. 237  
NMB CASE NO. 237

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**AWARD**

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



**Elizabeth C. Wesman, Chairman**

Marcus J. Ruet

**Organization Member**



**Carrier Member**

**Dated** December 13, 2018