

PUBLIC LAW BOARD 7154

Illinois Central/Canadian National (*Carrier*)

Versus

Brotherhood of Locomotive
Engineers & Trainmen (*Organization*)
and Claimant David Terven

Case #245

Award #245

CARRIER FILE: IC-BLET-2018-00012 (Dismissal)

STATEMENT OF CLAIM: Claim of CN/IC Engineer David Terven 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 January 31, 2018. 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 USOR Rule H-Furnishing Information and Conduct.

FINDINGS: This matter is properly before this Public Law Board in accordance with 45 USC 151-163; and the subsequent agreement between the parties establishing this Board.

On 1-16-18, a formal investigative hearing was held by the Carrier in an effort to develop all relevant facts pertinent to this matter.

Following the hearing, the Carrier disciplined the Claimant for an alleged violation of the Carrier's U.S. Operating Rules, Rule H, to which the Organization and Claimant hereby appeal.

CN U.S. Operating Rule H states:

"H. FURNISHING INFORMATION AND CONDUCT.

Dishonesty, disloyalty, insubordination, willful neglect, gross carelessness, desertion from duty, making false reports or statements, concealing facts concerning matters under investigation, immoral conduct, including but not limited to conduct of any employee leading to the conviction of any felony, and serious violations of the law are prohibited. Employees must not be quarrelsome, vicious or enter into disputes, arguments, or fights with any person, regardless of provocation. Any incidents are to be reported to the proper authority.

As a CN employee, you are expected to be familiar with, read and be governed by the Company's Code of Business Conduct and policies, and understand how they apply to you and your job. Company policies are accessible on CN's electronic portal (ePortal) in the Employee Self-Service section under Policies and Guidelines.

Any employee convicted of a felony or other serious violation of the law must notify their supervisor no later than the end of the first day immediately following the day the employee received notice of the conviction.

Employees must not withhold information, or fail to provide all the facts to those authorized to receive information regarding accidents, injuries, rule violations, breaches of company security, or unusual events. This duty to furnish information includes but is not limited to accident and injury reports, recorded statements, full cooperation in injury investigations, and safety rules violations. Employees must also take all reasonable measures to protect and preserve evidence where it is within their control and ability to do so."

CARRIER POSITION: The Claimant, while working as Engineer; marked off from December 23, 2017 through December 27, 2017 under false pretenses in an attempt to obtain unexcused time off.

On 12-27-17, the Claimant attempted to mark off FMLA. When informed that he would then have to be placed in medical leave status; he then changed his story and stated he did not have a ride to work. The Claimant admitted to asserting a false mark off attempt by citing FMLA.

The Claimant also marked off on 12-23, 12-24, 12-25, and 12-26 by falsely asserting illness and/or illness in his family.

The Claimant's failure to provide honest information resulted in a proven violation of Rule H governing honesty. The discipline is appropriate.

ORGANIZATION POSITION: The Claimant was improperly withheld from service prior to the investigation, as this matter was not serious and involved no theft and no accident.

The Claimant worked 6 consecutive days without a 24-hour rest period, prior to marking off. The Carrier failed to provide the Claimant's work history, which would have demonstrated the Claimant's diligent work ethic.

The Carrier Charging Officer (Hyatt) gave false testimony about his reasons for not contacting the Claimant and about how, when, and why he held the Claimant out of service. However, the Carrier has assessed no discipline for Mr. Hyatt's dishonesty. Furthermore, the Carrier Officer's false testimony deprives the Claimant of a fair hearing in accordance with Rule 29B of the collective bargaining agreement.

The Carrier refused to allow the tape recordings between the Claimant and the Carrier's Crew Management Center when requested by the Organization, which he could have easily explained.

The Claimant laid off using FMLA on 12-23 and 12-26 for legitimate medical reasons. The Claimant also laid off appropriately with the flu and while his children were suffering with the flu on 12-24 and 12-25. As for 12-27, the Claimant did not lay off nor did he attempt to lay off as the Carrier has falsely asserted.

The Claimant's discipline is unwarranted.

AWARD: The Hearing Officer offered to stop the hearing and afford the Local Chairman any time necessary to review the tapes/transcripts of the Claimant's conversations with the Crew Management Center (*page 12 of the hearing transcript*). The Local Chairman declined.

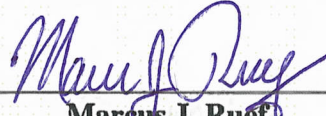
The Claimant changed his story about his purported reasons for laying off on 5 different dates (12-23, 12-24, 12-25, 12-26, 12-27). On 4 of those 5 dates, the

Claimant initially asserted his layoffs were predicated upon FMLA; only to change those stories later after the layoffs occurred. Falsely asserting FMLA is a terminable offense.

The claim is denied.



**Sidney Moreland
Arbitrator/Neutral Member**



**Marcus J. Ruef
Organization Member**



**John K. Ingoldby
Carrier Member**