

AWARD NO. 25  
Case No. 25

Organization File No.  
Carrier File No. IC-BLET-2009-00073

**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 L. A. Adams for reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on March 31, 2009 expunged from his personal record and that he be compensated for all time lost from the date he was removed from service until the date he resumes service, plus out of pocket expenses for health & welfare and any other benefits which would be provided to him as a CN/IC Engineer for allegedly violating CN/IC U.S. Operating Department Rule 520 in connection with alleged damage to the South Lead/Scale Track switch on February 19, 2009 at approximately 2330 hours while working as Engineer on R95371-19.

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.

The essential facts in this case are undisputed. While Claimant was assigned as Engineer on Train R95371-19 at Jackson, Mississippi, he was coming out of No. 10 rail and observed that the switch points were not aligned for his movement. Claimant placed the train in emergency, but was

not able to stop before getting into the switch. Although the train did not go through the switch, the bridle arm was bent as a result of this incident.


Claimant and his crew were consequently directed to attend a formal investigation at which they were charged with damaging the switch. Following the investigation, Claimant was dismissed from service. While Claimant did not deny operating into the switch, he explained that he was operating with the locomotive's long nose forward and was on the east side of the track while the switch target was on the west side. Furthermore, Claimant asserted that the switch target was backwards, erroneously indicating that the switch was lined for his movement.

We must agree with the Carrier that Claimant must bear the responsibility for damaging the switch. The Carrier's rules require the engineer to look for switches that are not properly lined. The expectation is that he will note whether or not the switch points are in alignment. A switch target is not always a true indicator of the position of the switch, particularly in this case where other employees, including Claimant's conductor, apparently knew that this target was wrong. We conclude, therefore, that the charge against Claimant was proven.

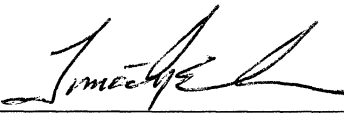
There are several factors, however, that lead us to the conclusion that the discipline assessed in this case was excessive. First, we note that Claimant had over eight years of service at the time of this incident. While his record indicates several disciplinary entries, it had been two years since his last violation of any rule dealing with the operation and handling of engines. Secondly, we consider the fact that the switch was difficult for him to see because of the positioning of the locomotive to be a mitigating factor. Once he saw that the switch was not properly lined, he took the appropriate action to stop the train.

Accordingly, we will direct that Claimant be reinstated to service with seniority rights unimpaired, but without compensation for time lost. Claimant is to understand that this is a last chance for him to demonstrate that he is capable of complying with the Carrier's rules and regulations. Any future violations may certainly warrant his permanent dismissal.

AWARD: Claim sustained in accordance with the above Findings.

  
\_\_\_\_\_  
Barry E. Simon  
Chairman and Neutral Member

  
\_\_\_\_\_  
Dennis Pierce  
Employee Member

  
\_\_\_\_\_  
Timothy E. Rice  
Carrier Member

Dated: February 19, 2010  
Arlington Heights, Illinois