

PUBLIC LAW BOARD NO. 7154

**PLB CASE No. 281
IC-BLET-2019-00099**

The Board consisted of the regular members and in addition Referee Meeta A. Bass when award was rendered.

**PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS
) AND TRAINMEN
)
TO) VS.
)
DISPUTE) ILLINOIS CENTRAL RAILROAD COMPANY**

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Meyun Donnell for removal of unwarranted discipline of 5 days actual suspension from service (July 24, 2019 through July 28, 2019) for the alleged violation of rules, regulations and/or policies while working as a crew member. The claim is also for all compensation for time lost, an additional day's pay for attending the investigation, plus any other benefits which would be provided to him as a CN/IC Locomotive Engineer, for the alleged violation of AMC Attendance Guidelines for Unionized Employees.

FINDINGS:

**The Board, upon the whole record and all the evidence, finds that:
The Carrier and the Employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.
This Board has jurisdiction over the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.**

The Claimant has eleven (11) years of services with the Carrier; at the time of the incident, the Claimant held the position of an Engineer. The Claimant was absent on April 10, 2019, following a rest day, May 23, 2019, following a rest day, and May 24, 2019, prior to a FMLA day. The Trainmaster did not know the reason(s) for the layoffs. The Claimant testified that he believed that he met the requirements of Article 32 of the parties' collective bargaining agreement.

The Carrier issued a Notice of Investigation letter dated May 29, 2019, which stated as follows "... to develop the facts and to determine your responsibility, if any, in connection with information indicating that your absence on May 24, 2019, when considered with other absences during the 12 week period prior to May 24, 2019, maybe in violation of requirements of the Attendance Guidelines...."

Following some postponement, the investigation hearing was held on July 9, 2019. Following the investigation hearing, the Claimant received a Discipline Notice dated July 23, 2019, finding a violation of AMC Attendance Guidelines for Unionized Employees. The Claimant was assessed five (5) days actual suspension from service. The Organization appealed the Carrier's decision by letter dated August 6, 2019, and the Carrier denied the same on October 3, 2019. A formal conference was held with no change in the position of the Carrier on October 31, 2019. This matter is before this Board for a final resolution of the claim.

The Board has reviewed the record developed by the parties during their handling of the claim on the property, and considered evidence related to the following to make its determination of this claim:

- 1) Did Claimant receive a full and fair investigation with due notice of charges, opportunity to defend, and representation?
- 2) If so, did the Carrier establish by substantial evidence that Claimant was culpable of the charged misconduct or dereliction of duty?
- 3) If so, was the penalty imposed arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case?

The Carrier contends that the Claimant was afforded a fair and impartial hearing. The Carrier contends that there is substantial evidence that the Claimant had marked off in excess of the Attendance Guidelines. The Carrier argues that the Claimant had a duty to maintain a good attendance record. The Carrier argues that if the Claimant needed to attend to an issue, he needed to make use of other authorized leave. Further, the Carrier contends that the Claimant made no effort to speak with a manager nor accept responsibility for the violation under the Waiver provision. Lastly, the Carrier contends that the Claimant's disciplinary record indicates the discipline is appropriate for this attendance violation. It is the Carrier's position that the claim should be denied.

The Organization contends that the Claimant was sick and unable to work in the dates in question. The Organization argues that Article 32A of the CBA states that Engineers do not have to work when they are sick, and the CBA supersedes the

Attendance Policy. The Organization contends that the Carrier failed to offer or discuss a Waiver for the alleged violation as indicated in its policy. Further, the Organization contends that the Carrier failed to formally coach the Claimant and issue a letter of caution contrary to its policy. It is the position of the Organization that the claim should be sustained.

The Carrier charged the Claimant with violation of AMC Attendance Guidelines for Unionized Employees. The AMC Guidelines are attached hereto and incorporated by reference.

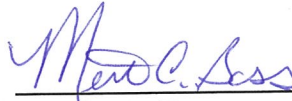
After a review of the record submitted to this Board, the Board finds that the Claimant received a full and fair investigation with due notice of charges, opportunity to defend, and representation. The Board further finds that the Claimant marked off in excess of the days allowed by the Attendance Guidelines and the Carrier established by substantial evidence that the Claimant violated the AMC Attendance Guidelines. After review of the on-property handling of this claim, the Board finds that the language of the notice of investigation provides sufficient notice to the Claimant of his right to request a waiver and the Claimant made no such request. The Board finds no policy violation of the Carrier. The Board further finds that this claim represents the third disciplinary incident for an attendance violation since the revision of the policy. The Claimant who has eleven (11) years of experience should have known his responsibilities. Therefore, the Board finds that the penalty imposed was not arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.



Meeta A. Bass
Neutral



Carrier Member



Organization Member

Dated at Chicago, Illinois, this 29 day of May, 2020.