

AWARD NO. 28

Case No. 28

Organization File No.

Carrier File No. IC-BLET-2009-00036

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 C. E. Hodges for the removal of the (30) day suspension for the alleged violation of Canadian National/Illinois Central U. S. Operating Department Rule 1101 in connection with allegedly passing a red flag at Mile Post 886 on the McComb Subdivision without stopping while working as Engineer on M31971-20 at approximately 1530 on November 20, 2008 with all notations of discipline expunged from his personal work record and compensation for all time lost, including loss of earnings due to attending the investigation.

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.

On November 20, 2008 Claimant was working as Engineer on Train M31971-20 on the McComb Subdivision. On that date, Track Foreman Miller had obtained Planned Work protection between mileposts 886 and 879 from 7:00 am to 2:30 pm. Because of train traffic, the Rail Traffic Center directed Miller to keep up the yellow over red board and the red board after the expiration

of his Planned Work. At approximately 3:30 pm, Claimant's train passed milepost 886 without stopping.

Claimant and his conductor were consequently directed to attend a formal investigation at which they were charged with passing a red flag. Following the investigation, the Carrier determined that Claimant had violated Operating Rule 1101 and he was assessed a thirty day suspension.

The record of the investigation shows that Track Foreman Miller testified that the yellow over red and red boards had not been removed and were still posted. Claimant and his conductor both testified that they did not see the boards, although the conductor stated he saw the back of a red board at milepost 879. Furthermore, the Organization argues the train crew did not expect the flags to be displayed because it was outside the hours of the Planned Work. Operating Rule 1101, notes the Organization, states that red boards, when used with Planned Work, must be displayed "only during the hours Planned Work is in effect."


The Board understands the Organization's position with respect to the boards being displayed after the expiration of the Planned Work. It is evident Rule 1101 required Foreman Miller to remove the boards. Assuming, arguendo, that they were still up when the train went past milepost 886, does that mean they can be ignored? Obviously not. Upon seeing the boards, the train crew is required to take the appropriate action whether the boards should be there or not.

As to whether or not the boards were actually up, that is a question of fact that is left to the Hearing Officer. As has been noted by numerous Boards in this industry, determinations as to the credibility of witnesses are made by the Hearing Officers and we will overturn such determinations only upon our finding that they were unreasonably made. In this case, we can make no such finding.

Accordingly, we will defer to the Hearing Officer's finding of fact. That being said, we find that there was substantial evidence in the record to support the Carrier's charge against Claimant. In reaching this conclusion, we have considered the Organization's various procedural objections and find them to be without merit.

Although Claimant has a long record of service with the Carrier (over 34 years at the time of this incident), and few disciplinary entries (only one in the past ten years), we find that the discipline imposed in this case was appropriate. Failing to stop for red signals or flags is a serious offense that could result in casualties and/or damage to property. In consideration of Claimant's record, though, we will direct the Carrier to remove the disciplinary entry from his record if there are no further disciplinary actions before six months following the date of this Award. There shall be no payment of lost wages as the result of such action.

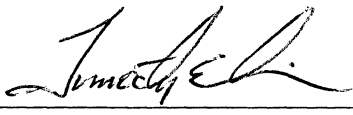
AWARD: Claim sustained in accordance with the above Findings.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: *February 19, 2010*
Arlington Heights, Illinois