

AWARD NO. 31
Case No. 31

Organization File No.
Carrier File No. IC-BLET-2009-00037

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 D. G. Williams, Jr. For reinstatement to service with seniority rights unimpaired, with all notations pertaining to discipline assessed on December 26, 2008 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 T in connection with allegedly sleeping while working as Locomotive Engineer on train C73891-24 at approximately 2020 hours on November 25, 2008 in Independence, LA.

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.

While operating Train C73891-24 on November 25, 2008, Claimant experienced a train separation at approximately 6:42 pm as the result of defective equipment. Superintendent Owens phoned Special Agent Fletcher and asked him to go to the train, which was at Independence, Louisiana, and offer assistance. When Fletcher arrived, track and mechanical department employees

informed him they were trying to contact Claimant by radio but could not reach him. Fletcher then went to the locomotive to check on Claimant. When he entered the locomotive, Fletcher observed Claimant in a reclining position with his feet up and his eyes shut. According to Fletcher, he called out to Claimant but got no response. He grabbed Claimant's arm and again called out to him, but still got no response. It was only when Fletcher shook his arm that Claimant awoke.

Claimant was subsequently directed to attend a formal investigation at which he was charged with sleeping on duty. Following the investigation, at which he denied he was sleeping, Claimant was dismissed from service. General Rule T – Sleeping states, "Employees must not sleep while on duty. Employees slouched or reclined with their eyes closed or concealed will be in violation of this rule."


At the investigation, testimony was offered by the Track Inspector who had been at the scene and had attempted to contact Claimant by radio. Additionally, Claimant's conductor testified that there was static on the engine radio, but that it was working and he had spoken to Claimant on it.

Obviously, Claimant's denial that he was sleeping conflicts with Fletcher's testimony that he was. As we noted in Award No. 19, also involving Claimant, it is not the role of this Board to weigh the credibility of the witnesses at the investigation. That role is reserved to the Hearing Officer. This Board will reverse the Hearing Officer's conclusion only if we can find it was unreasonably made. In this case, we can make no such finding. Fletcher's testimony is strengthened by the testimony of the other two employees that the radio on the locomotive was working and that attempts to contact Claimant on that radio were unsuccessful. We find, therefore, that there was

substantial evidence in the record to support the Carrier's charge against Claimant that he was in violation of General Rule T.

Sleeping on duty is a serious offense, particularly when it involves employees in train and engine service. We note that Claimant has had several disciplinary entries in the past few years related to operating rule violations. The Carrier has employed progressive discipline, culminating with Claimant's dismissal in this case. We find nothing in the record that would cause us to modify the discipline imposed by the Carrier. In reaching this conclusion, we have considered the various arguments advanced by the Organization and find them to be without merit.


AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: February 19, 2010
Arlington Heights, Illinois