

Case No. 371

Carrier File No. IC-BLET-2023-00037

PUBLIC LAW BOARD NO. 7154

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

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Christopher Sims for the unwarranted discipline of 15 days Actual Suspension from service (February 2, 2023 through February 16, 2023) assessed to Engineer Sims. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day’s pay for attending the hearing for alleged violation of USOR 600 – Switching Safely and Efficiently, and ABTH 320 – Starting Train.

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, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On January 15, 2023, Claimant Christopher Sims was the engineer on train L52471-15, an assignment which included moving 57 loaded cars from an industry. The crew was unable to pull all 57 cars at once, so they had to make a cut and take the cars out in two sections. Later that day, another assignment went to the industry, and it discovered track damage commonly referred to a “burnt rail.” The damage required replacement of two stock rails, two switch points, and 150 feet

of rail, at a cost of \$7,000.

A Carrier SLE was notified of the incident, and he obtained and reviewed event recorder downloads from Claimant's lead locomotive. The download data indicated that Claimant had reached notch 8 four times when trying to initiate movement, and that wheel speed had reached up to 49 mph.

By notice dated January 18, 2023, Claimant was directed to attend a formal investigation for the purpose of ascertaining the facts and to determine his responsibility, if any, in connection with damage to track during the incident described above. The hearing was held January 25, 2023, at which the SLE explained the download data. Claimant confirmed that he had trouble pulling the loads from the industry, and that he did reach notch 8 at times, but he testified that he had moved forward to some extent. After the hearing, Claimant was found to be in violation of USOR 600 – Switching Safely and Efficiently, and ABTH 320 – Starting Train, and by notice dated February 2, 2023, he was assessed a 15-day suspension.

The Organization maintains that the assessment of discipline was not warranted. It states that, while there was much discussion of Claimant's train handling and his struggle to get the cars to start moving, he did testify that he used throttle modulation to start the train moving forward. The Organization notes that the SLE conceded it was possible that there was some movement.

The Organization asserts that the download evidence confirms Claimant was trying to move the cars following the rules, until he realized he was not going to be able to pull them from the plant, at which point he informed his crew, and they made the cut described above. It also contends that there was an issue of the wheel slip light which kept lighting up and then going dark, and it posits that it was not working properly. The Organization further observes that the SLE only downloaded one of the two locomotives, and it states that the second unit could have been having undetected traction motor problems. It cites an award which sustained a claim in purportedly similar circumstances, and it requests that this claim be sustained as well.

The Carrier, on the other hand, maintains that the evidence submitted is adequate to establish that Claimant was in violation of the cited rules. It points to the SLE's testimony and his presentation of event recorder data which clearly showed that Claimant was attempting to move the cars by pulling for approximately 5 minutes, throttling up to notch 8 and reaching a wheel speed of 49 mph. It states that, while Claimant contended that he was creeping forward at times, the download evidence confirms that he used excessive throttle while the wheels were spinning while the locomotive was in a stationary position for an extended period of time. The Carrier notes that Claimant conceded the wheel slip light was flashing during the time in question, and it denies that any alleged issues with a traction motor impact the fact that Claimant used excessive throttle while remaining stationary.

The Carrier states that the violation in question is designated as a Level 2 violation under its discipline policy, and that a 15-day suspension is the appropriate measure when Claimant's discipline history is considered. It also notes that Claimant could have accepted a waiver for a 15-day record only suspension, and that he would not have lost any time or money. The Carrier concludes that the assessment was not arbitrary or an abuse of discretion, and it requests that the claim be denied.

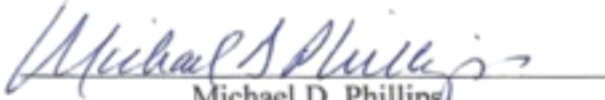
We have carefully reviewed the record and the parties' arguments, and we find that the record contains sufficient evidence to support the finding of guilt in this matter. The Carrier's burden in matters such as this is not proof beyond a reasonable doubt, but merely the production of substantial evidence to support the discipline assessment, which has been defined in prior awards as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Here, we believe that the evidence was such that a reasonable mind could accept the conclusion urged by the Carrier that Claimant used improper train handling in his attempt to start the train, resulting in damage to the track as described above, and which is clearly depicted in photographs introduced at the hearing. While Claimant contended that he was attempting to use proper throttle modulation techniques to get the train to move, we believe a reasonable mind could conclude from a review of the download data that he used excessive throttle for an extended period while the train


was stationary, resulting in the burnt rail. We do not find any indication that Claimant would have been misled by the flashing wheel slip light, or that the circumstances here are comparable to those described in the case cited by the Organization.

Having found that the rule violations were established, the Board turns to the level of discipline assessed. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion. The damage caused by Claimant's train handling was not insignificant, and the suspension assessed is consistent with the Carrier's discipline policy for such an event, and with Claimant's discipline record. In these circumstances, we are unable to find that the Carrier's actions were an abuse of discretion. Therefore, we will not substitute our judgment for the Carrier's now.

AWARD: Claim denied.


Michael D. Phillips
Chairman and Neutral Member


Pete Semenek
Employee Member


Steven K. Napierkowski
Carrier Member

Dated: February 2, 2024