

Case No. 374

Carrier File No. IC-BLET-2023-00067

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 Roderick Brown for the unwarranted discipline of 30 days Actual Suspension from service (February 5, 2023 through March 6, 2023). 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 501 – Speed and Hazmat Section VII – Key Trains.

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 February 5, 2023, Claimant Roderick Brown was the engineer on Key Train L54771-04, operating between Yazoo City, Mississippi and Memphis, Tennessee on the Yazoo Subdivision. The equipment speed restriction for Key Trains was 50 mph outside of High Threat Urban Areas (HTUAs). Claimant entered into PTC, however, that the maximum speed was 60 mph, and he operated above the 50-mph speed limit for over 20 miles, reaching a maximum of 61 mph. A

Carrier SLE was notified via email alert of the incident, and he obtained and reviewed event recorder downloads from the lead locomotive.

By notice dated February 6, 2023, Claimant was directed to attend a formal investigation for the purpose of ascertaining the facts in connection with his allegedly exceeding the speed limit at approximately MP 62 in connection with the incident described above. The hearing was held February 17, 2023, after which Claimant was found to be in violation of USOR 501 – Speed and Hazmat Section VII – Key Trains, and by notice dated March 2, 2023, he was assessed a 30-day suspension, concurrent with an FRA decertification/revocation period.

The Organization challenges the discipline assessment, stating that while the record confirms that Claimant exceeded the speed limit, there are several mitigating factors which contributed to the incident. It points out that Claimant had only four months of experience as an engineer and that his conductor had only a few months experience on the railroad. It notes that the crew had a job briefing, which included discussion that they were a Key Train, and that Claimant complied with the 35-mph restriction applicable to a Key Train in an HTUA.

The Organization further notes that Claimant was operating in PTC, and it asserts that the Carrier should have programmed the system to automatically implement speed restrictions for Key Trains. It argues that the incident would not have happened if PTC were so programmed, and it had alerted Claimant of the speed restriction. The Organization also questions why the Carrier did not take any action to notify the crew until approximately 12 hours after the automatic alert was sent, and it posits that this factor indicates the matter does not warrant such significant consequences. It further notes discrepancies on the Carrier's documentation regarding the number of the engine involved. The Organization concludes that, in consideration of the mitigating circumstances discussed above, the 30-day suspension for Claimant's first such infraction was punitive and heavy-handed, and it requests that the claim be sustained.

The Carrier, on the other hand, maintains that the evidence submitted is adequate to establish that Claimant was in violation of the cited rule. It points to an SLE's testimony and his presentation

of event recorder data which clearly showed that Claimant was traveling at over 50 mph for over 25 minutes, and that Claimant reached 61 mph, or 11 mph over the maximum speed. The Carrier notes that both Claimant and the conductor provided statements the day of the incident in which they admitted to the relevant facts.

The Carrier asserts that the defenses raised by the Organization are insufficient to relieve Claimant of responsibility. It states that, regardless of the crew's experience level, both crew members were required to know of the speed restrictions which were applicable to them, including the restriction applicable to a Key Train. It notes that both employees confirmed that they had discussed their train being a Key Train, and it states that information regarding the restriction was readily available in the applicable timetable.

With respect to PTC programming, the Carrier states that regardless of whether PTC was programmed to enforce the speed restriction, Claimant was required to know the restrictions and to comply with them. It avers that the presence of PTC does not relieve crew members of their own obligations to be vigilant and rules compliant, especially since both crew members here were aware that they were operating a Key Train. The Carrier also states that the time it took to complete the initial investigation after the automatic alert was generated reflects the fact that the email alerts are not monitored continuously, and it submits that the time involved has no bearing on whether Claimant was in violation of the cited rules. It adds that the issue with locomotive numbers on the download documentation was adequately explained, and that there is no reason to question the validity of the documents or data.

The Carrier states that there can be no questioning the significance of complying with the speed restrictions for Key Trains, as the potential consequences of an incident with such commodities can be devastating. It asserts that the violation in question is considered a Level 3 violation under its discipline policy, which warrants a 30-day suspension for a first offense, commensurate with Claimant's certification revocation period. It 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 traveled at more than 10 mph above the maximum allowable speed, eventually reaching 11 mph over the maximum allowable speed. The event continued for over 20 miles, which is not insignificant. We find nothing to indicate that the speed data was inaccurate.

We also find no mitigating circumstances which would relieve Claimant of his responsibility to comply with the restriction. We are not unsympathetic to the circumstances described by the Organization, but the record does reflect that Claimant was aware he was operating a Key Train, but he did not correctly input the speed restriction. The Organization's points regarding the potential benefits of PTC programming updates may well be valid, but we do not believe it is our function to rule on or opine about what technology potentially could be put in place. We therefore are unable to find that the lack of programming in PTC regarding automatic speed restrictions lessens Claimant's obligation to comply with the restrictions applicable to Key Trains.

Having found that the rule violation was 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. We concur with the Carrier that compliance with speed restrictions on Key Trains is essential in light of the potential for significant consequences. The 30-day suspension is consistent with the Carrier's discipline policy for such an event, and it is consistent with the certification revocation period, during which Claimant could not have worked as an engineer. 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. Phillipy
Chairman and Neutral Member

Peter Semenek

P. L. Crain

Pete Semenek
Employee Member

Patrick Crain
Carrier Member

Dated: September 4, 2024 PS