

AWARD NO. 37
Case No. 37

Organization File No.
Carrier File No. IC-BLET-2009-00215

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 R. S. McKnight for the removal of 10 days deferred suspension from his personal work record and compensation for all time lost, plus one day lost wages for attending the investigation, for the alleged violation of CN/IC U.S. Operating Rules – General Rule I in connection with whether or not he missed a call as Engineer for assignment C 73891-30, at approximately 1426 hours, Saturday, May 30, 2009.

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.


According to the Carrier, Claimant was first out and rested at 1412 on May 30, 2009. It asserts calls were made to both phone numbers he had listed in the crew calling system for service as engineer on Train C73891-30, ordered for 1615. Six attempts to reach him were unsuccessful and he did not respond to the messages that were left for him to contact the crew called. Consequently, he was directed to attend a formal investigation at which he was charged with missing a call.

Claimant explained that he was out in the country at the time he was called and was not aware he did not have a signal on his phone. By the time he returned home he had already missed the call. Following the investigation, Claimant was issued a ten day deferred suspension.

We find, based upon the record before us, that the Carrier had substantial evidence to support its charge against Claimant. We do not find the discipline imposed to be excessive. Employees are responsible for making themselves available for call. If they rely upon a cell phone to receive their calls, they must accept the fact that there are locations where the phone will not work. When they are in such locations, they effectively make themselves unavailable for call.

The Organization has objected to the Carrier's postponement of the investigation. A review of the record of the investigation shows that Claimant's representative asked for an explanation for the postponements. When given an explanation, he replied, "All right. Continue." We take that to be a waiver of any objection.


AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: August 25, 2010
Arlington Heights, Illinois