

AWARD NO. 39
Case No. 39

Organization File No.
Carrier File No. IC-BLET-2009-00267

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 M. K. Hilbun for the removal of 10 days actual suspension plus one day attending the investigation from his personal record, for the alleged violation of CN Operating Rules A, C, and T in connection with whether or not he was in a reclined position with his eyes closed and/or sleeping while serving as crewmember on R98071-29.


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.

The facts in this case are undisputed. On July 30, 2009, when Claimant and his crew could not be contacted by radio, Trainmaster Poole boarded Claimant's locomotive and observed him in a reclined position with his eyes closed. When he was directed to attend a formal investigation in connection with this incident, Claimant testified, "I had my eyes closed. I was leaned back in a reclined position with my eyes closed." Accordingly, he was assessed a ten day suspension.

Under the Carrier's rules, Claimant met the definition of sleeping on duty. We conclude, therefore, that the Carrier had substantial evidence to support its charge against him. Under the circumstances, we do not find the discipline imposed to be excessive. In reaching this conclusion, we have considered the various arguments raised 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: August 25, 2010
Arlington Heights, Illinois