

AWARD NO. 41
Case No. 41

Organization File No.
Carrier File No. IC-BLET-2009-00303

PUBLIC LAW BOARD NO. 7154

PARTIES) BROTHEROOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) CANADIAN NATIONAL (ILLINOIS CENTRAL RAILROAD)

STATEMENT OF CLAIM:

Claim of CN/IC Engineer S. R. Webb 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 A, General Rule C, LIFE U.S. Safety Rule Section II, Core Safety Rule 9, Rule 10 and T-6 in connection with injury sustained at approximately 2245 hours, Thursday, September 3, 2009, while working as engineer on assignment R 91171-03 (RHJY34).

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 descending from a locomotive on September 3, 2009, Claimant fell to the ground and sustained an injury to his knee. According to Claimant, his right foot slipped off the second step and he pushed himself away from the steps to avoid hitting his face on the locomotive. He was subsequently directed to attend a formal investigation in connection with this injury. Following the investigation, Claimant was assessed a ten day deferred suspension.

The Carrier takes the position that Claimant had not maintained three-point contact as he was coming down the stairs. If he had, says the Carrier, this injury would not have occurred. Thus, it concludes that the mere fact that Claimant fell from the engine is sufficient to prove he was in violation of the Carrier's safety rules.

While we agree that the rule requiring three-point contact is designed to prevent injuries when climbing on or off equipment, the evidence of record does not convince us that it is a guarantee that the employee will not fall. Factors such as the weight of the employee and the strength of his grip may affect his ability to maintain the three-point contact. In this case, we cannot accept the premise that the fact that he fell was proof he violated the rule. As we did in Award No. 3, we conclude the discipline was not supported by substantial evidence. It must be rescinded.


AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.



Barry E. Simon
Chairman and Neutral Member



Dennis Pierce
Employee Member



Timothy E. Rice
Carrier Member

Dated: August 25, 2010
Arlington Heights, Illinois