AWARD NO. 54
Case No. 54

Organization File No.
Carrier File No.

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. V. Warner for removal of a thirty (30) day deferred suspension, plus one (1) day attending the investigation held on February 26, 2010 to determine your responsibility, if any, in connection with damages sustained to track, property and railcar SOU 585400 . . .

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.

On February 5, 2010 Claimant was assigned as engineer on Job L 55871-05. During his tour of duty, he was shoving eight empties to Riviana Foods in Memphis, Tennessee. The shoving movement hit the bumping post and went past it. The first set of trucks on the lead car went off the rail into a fence, which then struck two automobiles. As a result of this incident, Claimant and his crew were directed to attend a formal investigation. The investigation was originally scheduled for

February 14, 2010. The Carrier then postponed the investigation twice due to scheduling conflicts. It was conducted on February 26, 2010.

The Organization has argued that the investigation was not held within the fifteen day time limit set forth in the Agreement. We do not find the Organization's argument to have merit. First, we do not agree that the Rule requires us to set aside the discipline if the investigation is not held within fifteen days. The Rule is not that specific. It states, "Investigations will *ordinarily* be held within fifteen days . . . ." Nevertheless, we note that neither Claimant nor his representative objected to the postponements when they were referred to at the beginning of the investigation. We conclude that any objection they might have had was waived by their acquiescence. It is well established in this industry that such time limit objections must be raised at the beginning of the hearing.

Our review of the record of the investigation shows that Claimant's conductor was giving car counts by radio, but his radio apparently failed after he told Claimant he had six more car lengths. It is evident Claimant continued to shove six to eight car lengths beyond that point, although the Carrier's rules required him to stop after three car lengths. We conclude, therefore, that there was substantial evidence to support the Carrier's charge against Claimant.

The Organization argues Claimant was subject to disparate treatment because neither the conductor nor the brakeman was disciplined. It is not the role of this Board to determine whether they were also in violation of Carrier rules. The scope of our examination is limited to whether Claimant violated the rules. It was Claimant's responsibility to stop the movement after three car lengths when he heard no further instructions. Unless the other employees had that same responsibil-

ity, we cannot find a case of disparate treatment. That phrase applies only when two employees are in identical circumstances, which is not the case herein.

In light of the nature of the offense and Claimant's prior disciplinary record, we find that the discipline imposed was neither arbitrary nor unreasonable.

AWARD: Claim denied.

Barry E. Simon
Chairman and Neutral Member

Michael D. Twombly
Employee Member

Timothy E. Rice
Carrier Member

Dated: JANUARY 18, 2011
Arlington Heights, Illinois