

AWARD NO. 58  
CASE NO. 58

PUBLIC LAW BOARD NO. 7154

PARTIES )  
TO )  
DISPUTE )

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN  
CANADIAN NATIONAL/ILLINOIS CENTRAL RAILROAD

STATEMENT OF CLAIM

Claim of CN/IC Engineer Jason Perry for the removal of twenty (20) days actual suspension and compensation for time lost plus one (1) day for attending the investigation held on September 19, 2012 and all notations of the alleged violation of USOR Rule 211 in connection with an incident that allegedly occurred at approximately 2100 hours on Thursday, September 6, 2012 when his train allegedly ran through at switch at Baton Rouge Yard while working as Engineer on TM30171R-05.

Carrier File No. IC-BLET-2012-00308

OPINION OF BOARD

After investigation held September 19, 2012 and by letter dated October 2, 2012, Claimant - an Engineer in the Carrier's service for two years - was suspended for 20 days on allegations that on September 6, 2012 he violated the Carrier's rules by running through a switch.

On September 6, 2012, Claimant was assigned as Engineer on the

TM30171R-05 at Baton Rouge. On that date, Claimant was working with Conductor F. Stewart. And on that date, Claimant's train ran through a switch while Claimant was shoving backwards.

Conductor Stewart was on the point with movement controlled through the radio. Tr. 27-28. Stewart testified that he told Claimant to back up ten car lengths. Tr. 30. According to Stewart, the switch was run through because he and Claimant lost communication and the loss of communication was out of his and Claimant's control. Tr. 28-29. Conductor Stewart testified that there was a communication failure after the movement started and when he realized that communication was lost, "[w]e went through the switch [which had been lined against him] by the car and a set of trucks." Tr. 27.

Claimant testified that he was shoving back and lost communication with Stewart, "... and so it hap-

pens the switch got run through." Tr. 31-32. Claimant testified that he was told by Conductor Stewart to back up ten cars and, to his knowledge, stopped after five cars, which was half the range of distance. Tr. 32. Claimant admitted running through the switch. *Id.* Claimant further testified that he called his conductor two times and when he did not get a response, he stopped. Tr. 35. Claimant did not put the train into emergency. Tr. 34.

USOR Rule 211 provides, in pertinent part:

**211. DIRECTING SHOVING  
MOVEMENTS VIA RADIO. ...**

Stop within one half the distance specified unless additional instructions are received. ...

Substantial evidence shows that Claimant did not comply with USOR Rule 211. Claimant's obligation was to "[s]top within one half the distance specified unless additional instructions are received." Even assuming the radio communication breakdown, Claimant was told to shove back 10 car lengths and should still have been operating in a manner to be able to stop by five car lengths or at least at a point prior to running through the switch. Notwithstanding Claimant's belief that he stopped after five car lengths,

Claimant ran through the switch and therefore could not have stopped after five car lengths. Claimant obviously did not stop by five car lengths. The fact that he ran through the switch shows that he did not even stop by 10 car lengths.

Claimant's prior disciplinary record shows a letter of reprimand from August 2011 for failure to wear proper PPE while on duty. A 20-day suspension in this matter is not excessive and arbitrary under the circumstances.

The purpose of progressive discipline is to correct misconduct through issuance of increasing amounts of discipline. While something less than a 20-day suspension could be argued for a run through switch where there was a loss of radio communication, Claimant did not appear to understand that he did not comply with the Carrier's safety-related rule. Claimant declined to take any responsibility for his actions and simply asserted "... and so it happens the switch got run through." Tr. 31-32, 39. Given Claimant's adamant position that he did nothing wrong even though he was operating in a manner that did not allow him to stop within half the range as required by the Carrier's

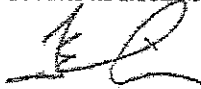
rules or even before he got to the switch, in this case a strong message has to be sent to Claimant that he has to conform to the Carrier's rules. A 20-day suspension will send that message and therefore was not arbitrary.

AWARD

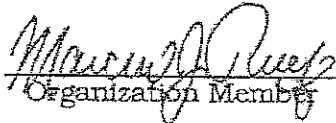
Claim denied.



Edwin H. Benn  
Neutral Member



Carrier Member



Organization Member

Dated: Jan 5, 2015