

PUBLIC LAW BOARD NO. 7154

BROTHERHOOD OF)	
LOCOMOTIVE ENGINEERS)	
AND TRAINMEN)	
)	CASE NO. 81
vs.)	AWARD NO. 81
)	
CANADIAN NATIONAL/ILLINOIS)	
CENTRAL RAILROAD)	

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Eddie McCandrew for reinstatement to service with seniority and vacation rights unimpaired, all notations of discipline assessed on May 21, 2014 expunged from his personal work record and compensation for all time lost as a result of same until the date he resumes service, plus out of pocket expenses for health and welfare and any other benefits which would be provided to him as a CN/IC Locomotive Engineer, for the alleged violation of CN/IC USOR Seventh Edition Effective January 2014 General Rule G-Drugs and Alcohol, Substance and Alcohol Free Environment (S.A.F.E.) Policy, Section 3.1-Paragraph B and Section 3.2 dated September 2012 and L.I.F.E. US Safety Rule Book, Second Edition for Transportation, Section IV, Substance and Alcohol Free Environment (S.A.F.E.) Policy and Guidelines, Paragraph B dated March 2005 in connection with allegedly reporting for duty under the influence of alcohol and/or other prohibited substances at 1950 hours on January 26, 2014 when called for train C74592-26 at Baldwin, Illinois and his subsequent alleged refusal to submit to a drug and alcohol test.

FINDINGS:

Public Law Board No. 7154, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Eddie McCandrew, had been employed by the Carrier for approximately 20 years. On May 21, 2014, following an investigation, the Carrier dismissed Claimant from service for reporting for duty under the influence of alcohol and/or other prohibited substances at 1950 hours on January 26, 2014, when he was called for train C74592-26 at Baldwin, Illinois, and for his subsequent refusal to submit to a drug and alcohol test. The Carrier found that Claimant had violated USOR Seventh

Edition Effective January 2014—General Rule G—Drugs and Alcohol; Substance and Alcohol Free Environment (S.A.F.E.) Policy, Section 3.1—paragraph B and Section—3.2, dated September 2012 and L.I.F.E. US Safety Rule Book, Second Edition for Transportation, Section IV, Substance and Alcohol Free Environment (S.A.F.E.) Policy and Guidelines, Paragraph B, dated March 2005.

The events which led to the action against Claimant began when, on the day at issue, Crew Caller David Crawl called Claimant to work Train C74592-26, on duty at 1950 hours. Mr. Crawl reported to Trainmaster Philip Miller that Claimant's speech had sounded slurred and he did not feel Claimant was fit for duty.

Trainmaster Miller testified that based upon this information he, along with Trainmaster Matthew McLaren and Assistant Trainmaster Anthony Lyles, met at the Baldwin Yard Office. When Claimant's crew arrived, both Mr. McLaren and Mr. Miller testified, Claimant mumbled and had difficulty answering questions, and that the pupils of his eyes were very large and twitching back and forth. Mr. McLaren stated that he asked Claimant to breathe towards him and he smelled alcohol on his breath and, as he moved closer, the same smell emanating from Claimant's body. Trainmaster Miller testified that he also smelled alcohol on Claimant. Mr. Lyles confirmed the two Trainmasters' accounts of these events.

The three Carrier Officers concluded that Claimant definitely appeared impaired. Mr. McLaren informed Claimant that they would transport him to a hospital for reasonable suspicion drug/alcohol testing, and he and Mr. Miller drove Claimant to Sparta Community Hospital. Both Mr. McLaren and Mr. Miller testified that, during the trip, they overheard Claimant on a telephone call, stating that he needed to "Red Block" himself and mentioning substance abuse. The Carrier's witnesses explained that Red Block is a policy in effect on some Carriers, but not this one, that allows an employee, if under the influence of alcohol or drugs, to mark off rather than take a call.

Mr. McLaren described that when they arrived at the hospital Claimant initially refused to come inside but did so eventually, and paused for a few minutes at the admissions desk. He then told the clerk that he was having chest pains and needed medical attention. Hospital personnel took him to the emergency room. A short time later, Mr. McLaren stated, a nurse came out and told him that Claimant would not take any tests, and shortly thereafter a nurse informed them that Claimant wanted the Carrier officers to leave, and they did so.

Claimant testified at the investigation that he was not under the influence of alcohol or drugs at the relevant times. He maintained that he had previously suffered a heart attack and was indeed having chest pains when he arrived at the hospital, likely as the result of the stress of the Carrier Officers converging upon him when he arrived at work. He denied that he had refused any testing, claiming that he had been "knocked out" at the hospital.

We have carefully reviewed the record in its entirety. The testimony of the Carrier's witnesses is sufficient to meet its burden of proving Claimant's guilt of the charges by substantial evidence. Indeed, they testified at length concerning the careful manner in which they determined reasonable suspicion that Claimant was under the influence of prohibited substances when he arrived at work, gave testimony not rebutted by Claimant that he attempted to mark off pursuant to a substance abuse program, albeit one not in effect on this railroad, and described how Claimant failed to submit to the required medical testing. His guilt has been established.

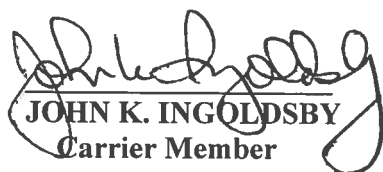
However, we find, under the particular circumstances of this case, that Claimant should be assessed a conditional suspension in accordance with the Carrier's Substance and Alcohol Free Environment Policy and Guidelines. Claimant may be reinstated to employment, without backpay, when he has fully complied with all instructions issued him by any Carrier official, including, among others, the Director of Medical Services or an Employee Assistance Program (EAP) counselor, and has been cleared by the appropriate authorities to resume his employment. Should Claimant fail to comply with all instructions in connection with this violation, this suspension will automatically be converted to a dismissal.

AWARD

Claim sustained in accordance with Findings.



JACALYN J. ZIMMERMAN
Neutral Member



JOHN K. INGOLDSBY
Carrier Member



MARCUS RUEF
Organization Member

Dated this *23* day of *May*, 2016.