

AWARD NO. 9

Case No. 9

Organization File No.

Carrier File No. IC-111-107-94

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 Bruce Z. Deardon for reinstatement to the service of Illinois Central Railroad with all seniority unimpaired, all notations in connection with this discipline be removed from his personal work record and that he be compensated from the date he was removed from service (October 28, 2007) until the date he resumes service, plus all time lost including costs for health and welfare and restoration of all vacation entitlements as a result of same, account alleged violation of CN/IC Railroad General Rules B, H, and Rule 100 in connection with (1) displaying an insubordinate, uncooperative, quarrelsome and an intimidating attitude toward a Trainmaster when allegedly engaged in verbally abusive language and behavior to him; (2) and allegedly attempting to intimidate said Trainmaster by allegedly bumping into him in a physically threatening manner and (3) delaying assignment L-56271R-28 at 0700 hours on October 28, 2007 in Jackson, MS.

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 October 8, 2007, Claimant was assigned as engineer on assignment L56271R-28, coming on duty at 7:00 am at Jackson, Mississippi. According to the Carrier, Trainmaster Robert Wade

received a phone call from Claimant's conductor to find out what work the assignment would be doing. Claimant was able to hear the phone conversation on the speakerphone. Claimant took exception with the trainmaster's instruction that they were to perform work on the North Lead and yelled into the phone that the assignment was supposed to work the South Lead. When the trainmaster instructed Claimant to go to work and not argue with him, Claimant replied, "Yes sir, Boss. I'se gets on the engine now. I'se do whats ever you say, Boss."

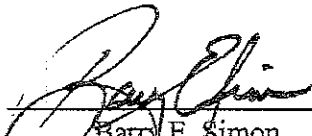
According to Trainmaster Wade, approximately fifteen or twenty minutes later he noticed Claimant walking to his engine, "taking as much time as he could trying to delay the job possibly just being real slow with everything working at a snail's pace." When the trainmaster approached him, Claimant started yelling that he was inspecting his engine. When he asked Claimant if there was a problem with the job, Claimant yelled, "No, I don't have a problem with this job; I've got a problem with you." When the trainmaster questioned what he meant, Claimant moved toward him and bumped him with his stomach. The trainmaster explained that Claimant was leaning on him "in a very threatening manner about four inches from [his] face." He said Claimant then yelled, "I've got a problem with you treating me like a dog." This conversation continued until the trainmaster took a step back and told Claimant he was out of service.

Claimant was subsequently directed to attend a formal investigation at which he was charged with engaging in verbally abusive language and behavior toward Trainmaster Wade, threatening to intimidate him and delaying his assignment. Following the investigation, Claimant was dismissed from service.

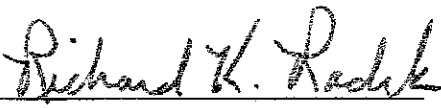
The Board has reviewed the record of the investigation and concludes that there was substantial evidence to support the Carrier's charge against Claimant. Although the Organization maintains that the case comes down to a dispute between the testimony of the trainmaster and that of Claimant, we must note that this Board does not sit to weigh the evidence. That function is reserved to the Hearing Officer, and we will reverse that decision only when it is clear it was made unreasonably. We can make no such finding in this case.

We find, however, that the discipline imposed was excessive. Accordingly, we will direct that Claimant be returned to service with seniority rights unimpaired, but without compensation for time lost. Claimant should understand that he will be expected to comply fully and appropriately with all directives from supervisory forces.

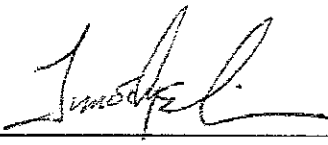
AWARD: Claim sustained in accordance with the above Findings.



Barry E. Simon
Chairman and Neutral Member



Richard K. Radek
Employee Member



Timothy E. Rice
Carrier Member

Dated: July 25, 2008
Arlington Heights, Illinois