CASE NO. 287
AWARD NO. 287

PUBLIC LAW BOARD 7154

PARTIES TO THE DISPUTE: **BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

And

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of CN/IC Engineer Terrill Green for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on September 19, 2019. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of USOR H-Furnishing Information and Conduct."

STATEMENT OF THE FACTS:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934.

This Public Law Board has jurisdiction over the dispute involved herein.

On September 5, 2019, the Carrier conducted an investigation in connection with "circumstances surrounding events that occurred during your tour of duty while working as a crew member of R9947129 and whether you violated any company rules,

regulations or policies in connection with the incident." Specifically, the evidence adduced at the investigation established that on August 25, 2019, the Claimant and his conductor were on assignment R99471-25 on at or near Reserve. At approximately 2337 hours, the Claimant and his conductor finished the assigned work listed on their daily operating plan. Claimant then got into his vehicle and left the property while the conductor remained at the yard office. After approximately two and one quarter hours, Claimant returned to the yard office.

Claimant testified at his investigation that he needed to leave the property in order to go home and check on his 9-year old son, who he was forced to leave at home without a babysitter. The crew was done with all of their assigned work and they were merely waiting on two trains to pass. Claimant assumed his conductor could do the roll-by inspection of these two trains, which would allow him sufficient time to go home and return before his shift ended. Claimant explained he had recently been through a difficult divorce and had partial custody of his young son.

Thereafter, on September 19, 2019, the Claimant was dismissed from service with the Carrier for violating USOR H - *Furnishing Information and Conduct.* After the Organization's appeals were denied by the Carrier, the matter was submitted to this Board for resolution.

Initially, the Organization's procedural contentions cannot be sustained because it has failed to establish that alleged violations prejudiced the Claimant in any way. Moreover, whereas here the Claimant admits to the material facts underlying the charges, such due process concerns cannot succeed.

Turning to the merits, there is no dispute the Claimant violated the above-cited Carrier rule by leaving the property without permission. The Carrier must be able to trust that its operating crews, who work largely without direct supervision, will remain at their worksites for their entire shifts while they are in paid status. This is a basic obligation and by doing otherwise, the Claimant exercised extremely poor judgement. For example, had a serious incident occurred involving the passing trains while the conductor was by himself, it could have resulted in catastrophic consequences.

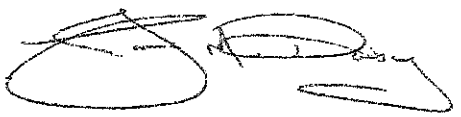
The Organization raises a number of extenuating circumstances pertaining to the Claimant's personal life, as well as the fact that the crew's work was completed and that he returned before there was any further work to be done. These factors show that the Claimant certainly was not trying to "game" the system, and that he was motivated by family needs – not by any malicious or devious intent. However, this cannot absolve the Claimant of wrongdoing and a severe penalty is warranted.

Based on a totality of the circumstances, the Board finds that the Claimant violated USOR-H but that the penalty shall be reduced to a suspension for time served and he shall be reinstated to service (subject to his fulfilling all return to duty requirements).

Accordingly, the claim is sustained in part and denied in part consistent with the findings.

AWARD

Claim sustained in part and denied in part consistent with the findings.



James M. Darby, Chairman

Marcus Ruef March 16, 2021

Marcus Ruef, Organization Member

In Dissent:

John Ingoldsby, Carrier Member

CASE NO. 288
AWARD NO. 288

PUBLIC LAW BOARD 7154

PARTIES TO THE DISPUTE: **BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

And

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of CN/IC Engineer Matthew Willard for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on August 24, 2019. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of USOR-G Drugs and Alcohol and Substance and Alcohol Free Environment (SAFE) Policy."

STATEMENT OF THE FACTS:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934.

This Public Law Board has jurisdiction over the dispute involved herein.

On September 11, 2019, the Carrier conducted an investigation in connection with the Claimant's alleged:

> ... failure to produce a sufficient sample of urine required for a post incident drug and/or alcohol test at approximately 2115 hours, August 14, 2019. After a doctor's appointment on August 22, 2019, the Medical Review Officer ruled there was no medical reason for Mr. Willard to not have been able to produce the urine sample and is considered a refusal under FRA regulations and Company Policy.

Specifically, the evidence adduced at the investigation established that on August 14, 2019, the Claimant and his crew ran through a switch. Soon thereafter, the Carrier administered probable cause drug and alcohol tests on the crew. The Claimant was unable to produce at least 45 ML of urine for the test during the allotted three-hour time to obtain the urine sample (notwithstanding consuming 50 ML of water throughout that period). The Claimant informed the Carrier he believed his inability to produce the sample was due to medications he was taking. Although the Claimant contends that 30 minutes later he was ready to provide the sample, Trainmaster Shockley informed him it was too late to obtain the sample (which is consistent with the Department of Transportation "DOT" Drug & Alcohol regulations testing rules).

That same day, the Carrier's Medical Review Officer ("MRO") approved the Claimant to be examined at an occupational health center to determine whether his inability to produce the required sample was medically-related. On August 22, 2019, he was examined by Dr. Erin Kennedy, who specializes in the field of occupational medicine.[1] Dr. Kennedy's August 22 report, states in pertinent part, as follows:

> [Claimant] was unable to produce a sample within three hours though he endorses having had 50 milliliters of water. He reports that he had used the bathroom just before the accident. He is not able to offer an explanation of being unable to use restroom. He denies any anxiety about producing a sample or urinating in public. He denies anxiety or other mood disorder in the past. He denies history of urinary tract or bladder concern. He denies history of UTI or STD. He reports stream seems medium strength without delay of startup. He feels empty following urination. On occasion he has sensed the needs to urinate again shortly

[1] An occupational physician "[o]versees the patient's diagnosis, treatment and prevention of occupational illnesses and/or injury. Prepares patients for return to work after illnesses or injury or may act as a consultant to identify workplace health hazards." (Transcript pp. 71-72.)

> after having gone, and then is unable to produces [sic] more. This is infrequent and not associated with burning or leakage. He denies diabetes or other cause for neurogenic bladder and has never been provided this diagnosis.

Dr. Kennedy also noted that the Claimant was taking allergy medications (including Dulera, Albuterol, Singulair, Benadryl, Cetirizine and Afrin), as well as other medications, and stated that the Claimant "denies change of hydration status as he has not noticed reduced urination or dry mouth with these." She added that

> there "were no track marks identified on skin. The patient's behavior and appearance were normal without fidgeting, tremors, pacing. He did not smell of smoke. He was well-groomed in clean clothing. I did not see indication of substance abuse."

Dr. Kennedy's report concludes "[t]here is not adequate explanation offered or identification of psychological condition to support inability to produce sample. This represents refusal to test."

Thereafter, on August 26, 2019, the Claimant furnished the Carrier a letter from his general practitioner explaining that the Claimant was prescribed allergy medication (Cetirizine and Diphenhydramine) "both of which have potential side effects of causing urinary retention." His physician scheduled him to see a urologist. Unfortunately, he was unable to be examined by the urologist prior to his September 11 Investigation. The urologist's report, dated September 23, 2019, states that the Claimant "is on multiple medications which could lead to difficulties initiating a urinary stream." He added that

> [h]e does not have any other sequela from this, however, as he is not having any infections, or episodes of urinary retention. That being said, it is clinically not unreasonable for him to have some difficulty producing a urine specimen on demand given these medications.

On September 25, 2019, Claimant was dismissed from service with the Carrier for violating USOR Rule G – *Drugs and Alcohol* and the Carrier's *Substance and Alcohol Free (S.A.F.E.) Policy*. After the Organization's appeals were denied by the Carrier, the matter was submitted to this Board for resolution.

Initially, the Organization's procedural contentions cannot be sustained because it has failed to establish that alleged violations prejudiced the Claimant in any way. Moreover, whereas here the Claimant admits to the material facts underlying the charges such due process concerns cannot succeed.

Turning to the merits, the testing performed on the Claimant was handled pursuant to the federal Department of Transportation's Drug & Alcohol regulations governing reasonable cause testing. There is no dispute the Carrier had authority to test the Claimant after his train ran through a switch. The dispute involves the circumstances surrounding the Claimant's inability to provide a sufficient urine sample.

DOT rules provide that where an employee fails to produce a sufficient urine sample it is deemed to be a refusal to take the test, unless the employee can provide medical evidence that the inability to provide the sample was due to medical reasons. Specifically, DOT Rule 49 CFR Part 40, Section 40.193 provides as follows:

> (C) As the DER [designated employer representative], when the collector informs you the employee has not provided a sufficient amount of urine ..., you must, after consulting with the MRO, direct the employee to obtain, within five days, an evaluation from a licensed physician, acceptable to the MRO, *who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.* (Emphasis added.)

The record shows that after the Claimant failed to produce a sufficient urine specimen during the three-hour collection period, the DER and MRO scheduled the Claimant for a physical examination at an occupational medical/therapy clinic. The physician who examined him specializes in occupational medicine, which treats occupational-related diseases and frequently handles return-to-duty physicals. Thus, occupational medicine is designed to evaluate whether an employee can physically perform a particular job. The record before me does not support a finding that an occupational physician specializes or "has an expertise" in determining whether the Claimant had a medical reason for being unable to produce a urine specimen.

This deficiency is reflected in Dr. Kennedy's examination of the Claimant, which spent considerable time checking his reflexes, range of motion and overall health. Pointedly, while her report generally discusses the Claimant's urinary patterns, all of her conclusions are drawn from the Claimant's verbal response to questions and nowhere in the report does it address the impact that the medications he was taking can have on the ability to urinate. On the contrary, the Claimant's general practitioner and urologist prepared reports making clear that a number of the specific medications being taken by the Claimant can impact the ability to produce urine. These finding are also supported by the substantial medical information presented by the Organization at the investigation.

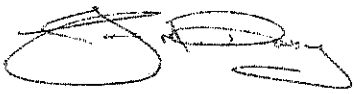
Furthermore, the language of Section 40.193 (C) requires that the employee failing to produce the sample must be "direct[ed] ... to obtain, within five days, an evaluation from a licensed physician ...." Here, the Carrier did not direct Claimant to obtain a medical evaluation by an expert. Rather, it sent him to an occupational clinic and relied on that report alone to conclude that his failure to produce a sufficient urine sample constituted a "refusal" to take the test. This is in the face of reports from his own physician and urologist that his medications could have caused the inability to urinate. Based on these narrow facts and circumstances the Board cannot uphold the Carrier's determination that the Claimant violated Rule G.

Thus, the Claimant shall be reinstated to service. Unfortunately, because the Claimant was unable to have his urine tested, there is no evidence that he was fit for duty to return to service. The Board is reluctant to award a make whole remedy since the record does not support a finding that the Claimant passed the drug test. Therefore, the reinstatement shall be without backpay and subject to the Claimant completing and passing all relevant return to duty testing.

Accordingly, the claim is sustained in part and denied in part, consistent with the findings.

AWARD

Claim sustained in part and denied in part, consistent with the findings.



James M. Darby, Chairman

In Dissent:

Marcus Ruef March 16, 2021
Marcus Ruef, Organization Member

John Ingoldsby, Carrier Member

CASE NO. 289
AWARD NO. 289

PUBLIC LAW BOARD 7154

PARTIES TO THE DISPUTE: **BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

And

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of CN/IC Engineer Akinni Snodgrass for the unwarranted discipline of 5 days Actual Suspension from service (December 19, 2019 through December 23, 2019) assessed to Engineer Snodgrass. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR I-duty Reporting or Absence."

STATEMENT OF THE FACTS:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934.

This Public Law Board has jurisdiction over the dispute involved herein.

On December 3, 2019, the Carrier conducted an investigation in connection with the Claimant's alleged violation of the Carrier's Management Attendance Guidelines ("AMG") on November 19, 2019. Specifically, the evidence adduced at the investigation established that Claimant was absent on September 17, 2019 (following a rest day),

and November 19, 2019 (following a rest day). The record shows that the Claimant was absent on the latter date due to a recurring allergy issue that required him to see his physician and be prescribed stronger medicine, both of which were documented at the investigation. Nonetheless, these absences resulted in him having more than one occurrence that is on a holiday or immediately before or after a holiday, rest day, Personal Leave Day (PLD), vacation day, or Family Medical Leave Act (FMLA) day, in violation of the Carrier's Attendance Management Guidelines ("AMG").

Therefore, on December 18, 2019, the Carrier notified the Claimant that he was found to be in violation of USOR Rule I - *Duty-Reporting or Absence*, and assessed a 5-day actual suspension from service. After the Organization's appeals were denied by the Carrier, the matter was submitted to this Board for resolution.

This Board finds that the instant circumstances are nearly identical to those this Board faced in Award No. 255 and these parties also presented in 1st Div. Award No. 28315. In those cases, the Boards held that given the language of Article 32 of the parties' Collective Bargaining Agreement ("Engineers shall not be expected to work when sick") employees could not be disciplined for documented sick absences. As elaborated by the 1st Division:

> The Board recognizes the importance of attendance to the Carrier so that work can get done and the railroad can operate in an efficient manner. However, despite the fact that the Claimant was absent on several days, the record shows that he had valid excuses for those days. In addition, there is language in the Parties' Agreement which indicates the claimants should not be required to work if they are sick. The Claimant was clearly sick on the days in question and, therefore, the Carrier did not meet its burden of proof when it disciplined the Claimant. Therefore, the claim shall be sustained.

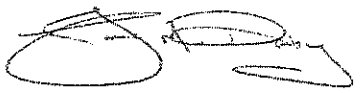
The Carrier has failed to present sufficient reasons why the foregoing precedent on this property, interpreting the identical Agreement, should not be followed here. The Carrier's contention that these previous holdings should be disregarded because they erroneously place a burden on the Carrier to prove that an engineer was not ill (which defeats the purpose of the AMG which focuses on the number of unexcused absences,

not the reasons for them) cannot be sustained. Nothing herein is intended to deprive the Carrier of its right to require employees to produce timely, reliable, and credible documentation of their illnesses commensurate with their absences.

Accordingly, the claim is sustained.

AWARD

Claim sustained.



James M. Darby, Chairman

In Dissent:

Marcus Ruef March 16, 2021

Marcus Ruef, Organization Member

John Ingoldsby, Carrier Member

CASE NO. 290
AWARD NO. 290

PUBLIC LAW BOARD 7154

PARTIES TO THE DISPUTE: **BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

And

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of CN/IC Engineer Darnell Sutton for the unwarranted discipline of 5 days Actual Suspension from service (December 27, 2019 through December 31, 2019) assessed to Engineer Sutton. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR I-Duty Reporting or Absence.

STATEMENT OF THE FACTS:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934.

This Public Law Board has jurisdiction over the dispute involved herein.

On December 17, 2019, the Carrier conducted an investigation in connection with the Claimant's alleged violation of the Carrier's Management Attendance Guidelines ("AMG") on December 7, 2019. Specifically, the evidence adduced at the investigation established that Claimant previously had unexcused absences on

November 3, 2019 and November 12, 2019. Further, the record shows that he marked off sick on December 7, 2019, due to illness. The record also contains two physicians' notes from December 9 and 10 substantiating that the Claimant missed work on December 7 due to illness. The Claimant's December 7 absence triggered the discipline provisions of the AMG, inasmuch as he had more than two unexcused absence within the twelve-week review period.

Thereafter, on December 27, 2019, the Carrier notified the Claimant that he was in violation of USOR Rule I - *Duty-Reporting or Absence*, and assessed a 5-day actual suspension from service. After the Organization's appeals were denied by the Carrier, the matter was submitted to this Board for resolution.

This Board finds that the instant circumstances are nearly identical to those this Board faced in Award No. 255 and these parties also faced in 1st Div. Award No. 28315. In those cases, the Boards held that given the language of Article 32 of the parties' Collective Bargaining Agreement ("Engineers shall not be expected to work when sick") employees could not be disciplined for documented sick absences. As elaborated by the 1st Division:

> The Board recognizes the importance of attendance to the Carrier so that work can get done and the railroad can operate in an efficient manner. However, despite the fact that the Claimant was absent on several days, the record shows that he had valid excuses for those days. In addition, there is language in the Parties' Agreement which indicates the claimants should not be required to work if they are sick. The Claimant was clearly sick on the days in question and, therefore, the Carrier did not meet its burden of proof when it disciplined the Claimant. Therefore, the claim shall be sustained.

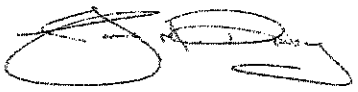
The Carrier has failed to present sufficient reasons why the foregoing precedent on this property, interpreting the identical Agreement, should not be followed here. The Carrier's contention that these previous holdings should be disregarded because they erroneously place a burden on the Carrier to prove that an engineer was not ill (which defeats the purpose of the AMG which focuses on the number of unexcused absences, rather than the reasons for such absences) cannot be sustained. Nothing herein is

intended to deprive the Carrier of its right to require employees to produce timely, reliable, and credible documentation of their illnesses commensurate with their absences.

Accordingly, the claim is sustained.

AWARD

Claim sustained.



James M. Darby, Chairman

In Dissent:

Marcus Ruef March 16, 2021
Marcus Ruef, Organization Member

John Ingoldsby, Carrier Member

CASE NO. 291
AWARD NO. 291

PUBLIC LAW BOARD 7154

PARTIES TO THE DISPUTE: **BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

And

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

> "Claim of CN/IC Engineer Michael Owens for the unwarranted discipline of 5 days Actual Suspension from service (January 14, 2020 through January 18, 2020) assessed to Engineer Owens. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR I-Duty Reporting or Absence."

STATEMENT OF THE FACTS:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934.

This Public Law Board has jurisdiction over the dispute involved herein.

On January 7, 2020, the Carrier conducted an investigation in connection with the Claimant's alleged violation of the Carrier's Attendance Policy on December 18, 2019. Specifically, the evidence adduced at the investigation established that on December 17, 2019, the Claimant's wife had a medical emergency that required her to be taken to the emergency room. The Claimant was aware that he was approaching

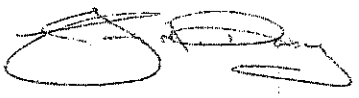
the threshold for maximum unexcused absences under the Carrier's Attendance Management Guidelines ("AMG"). In this regard, the investigation established that the Claimant already had unexcused (non-contractual) absences on October 20, 2019 and December 6, 2019, meaning that if he had any further unexcused absences he ran the risk of violating the AMG (having more than two occurrences of any duration, and more than three total workdays missed, within the twelve-week period immediately prior to the most recent absence).

Accordingly, before he left to take his wife to the emergency room the Claimant notified his Trainmaster of the situation. The Trainmaster told the Claimant to "go take care of your family." The Claimant was absent due to his wife's medical condition on December 17 and 18, 2019. Shortly thereafter he presented documentation to the Trainmaster supporting the emergency nature of the absences. Thereafter, on January 14, 2020, the Carrier notified the Claimant that he was in violation of USOR Rule I - *Duty-Reporting or Absence*, and assessed a 5-day actual suspension from service.. After the Organization's appeals were denied by the Carrier, the matter was submitted to this Board for resolution.

The Board finds that under the facts of this case, where the Claimant sought permission in advance, was authorized by management to leave and thereafter provided documentation substantiating the legitimate need for the leave, such absences should be considered as excused and therefore did not trigger the enforcement of the AMG. Accordingly, the claim is sustained.

AWARD

Claim sustained.



James M. Darby, Chairman

In Dissent:

Marcus Ruef March 16, 2021

Marcus Ruef, Organization Member

John Ingoldsby, Carrier Member

CASE NO. 292
AWARD NO. 292

PUBLIC LAW BOARD 7154

PARTIES TO THE DISPUTE: **BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

And

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

> "Claim of CN/IC Engineer Omar Boone [PIN 156560] for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on January 29, 2020. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of USOR I-Duty Reporting or Absence."

STATEMENT OF THE FACTS:

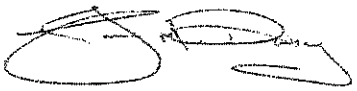
The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934.

This Public Law Board has jurisdiction over the dispute involved herein.

This dispute was settled by the parties after it was filed with this Board. Accordingly, the claim is dismissed.

AWARD

Claim dismissed.



James M. Darby, Chairman

Marcus Ruef March 16, 2021
Marcus Ruef, Organization Member

John Ingoldsby, Carrier Member

CASE NO. 293
AWARD NO. 293

PUBLIC LAW BOARD 7154

PARTIES TO THE DISPUTE: **BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

And

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of CN/IC Engineer Eric Dubois [PIN 166602] for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on February 4, 2020. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of USOR I-Duty Reporting or Absence."

STATEMENT OF THE FACTS:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934.

This Public Law Board has jurisdiction over the dispute involved herein.

On January 20, 2020, the Carrier conducted an investigation in connection with the Claimant's alleged tardiness on January 8, 2020. Specifically, the evidence adduced at the investigation established that on the day in question Claimant was called

for assignment E27101-08, with an on-duty time of 0945 hours, and he appeared 55 minutes for the same. Claimant failed to notify his supervisor or the crew caller that he would not report on time, as required. He admitted these facts, explaining that he was tardy because he fell back asleep by mistake. Thereafter, on February 4, 2020, Claimant was dismissed from service with the Carrier for violating USOR Rule I - *Duty-Reporting or Absence*. After the Organization's appeals were denied by the Carrier, the matter was submitted to this Board for resolution.

Initially, the Organization's procedural contentions cannot be sustained because it has failed to establish that alleged violations prejudiced the Claimant in any way. Moreover, whereas here the Claimant admits to the material facts underlying the charges such due process concerns cannot succeed.

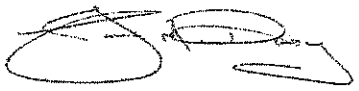
Turning to the merits, there is no dispute that the Claimant violated the above-cited Carrier rule. It goes without saying that a fundamental obligation of the employment relationship is to show up for work and do so on time. The Carrier determined that this infraction was serious enough to warrant a Level 2 violation. The Organization's assertion that a missed call should not rise to a Level 2 Violation, absent evidence of an accident, injury or equipment damage cannot succeed. Under the Carrier's Discipline Policy a Level 2 Violation is "a violation that is serious **and/or** has the potential to result in an accident or incident, damage equipment, or cause injury and does not meet otherwise the criteria for a Level 3 or Level 4 Rule Violation." Thus, the Carrier did not violate its policy by treating what it considered to be a serious infraction as a Level 2 Violation, despite the absence of an accident, injury or equipment damage.

Finally, the Board concludes the penalty imposed here was not arbitrary or excessive. The discipline is consistent with the Disciplinary Policy. Indeed, In less than 36 months, Claimant had received a Level 2 violation, a Level 3 violation and a Letter of Caution, including a 60-day record suspension in June 2019 for a similar violation. The Organization's claim that the previous Level 2 Violation should have been removed after six months is not supported by the language of the Carrier's Discipline and Attendance Policies.

Accordingly, the claim is denied.

AWARD

Claim denied.



James M. Darby, Chairman

Marcus Ruef March 16, 2021
Marcus Ruef, Organization Member

John Ingoldsby, Carrier Member

CASE NO. 294
AWARD NO. 294

PUBLIC LAW BOARD 7154

PARTIES TO THE DISPUTE: **BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

And

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of CN/IC Engineer Jacob Wooten for the unwarranted discipline of 15 days Actual Suspension from service (March 6, 2020 through March 20, 2020) assessed to Engineer Wooten. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR 602 – Hand Brakes and ABTH 502 – Securing Unattended Trains or Equipment."

STATEMENT OF THE FACTS:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934.

This Public Law Board has jurisdiction over the dispute involved herein.

On February 20, 2020, the Carrier conducted an investigation in connection with an incident on January 14, 2020, where he allegedly failed to properly secure unattended equipment left on the main line, while assigned to L56591-14.

Specifically, the evidence adduced at the investigation establish that on the day in question the Claimant was working as engineer on Train L56591-14 at Dyersville, Iowa on the Dubuque Subdivision. The crew stopped the train on the main line and tied it down to spot a car on the lumber track. Conductor Baskin tied one handbrake on the 10 cars left on the main line, performed a brake test, and relayed the information to the Claimant. Assistant Superintendent Craig Lancour was in the vicinity performing efficiency tests and flagged the crew for failing to place a sufficient number of handbrakes on the ten unattended cars.

In this regard, both USOR 602 – *Hand Brakes* and ABTH 502 – *Securing Unattended Trains or Equipment* require a minimum of one handbrake to be secured to unattended cars, plus one additional handbrake for every 10 cars left unattended. The rules provide examples showing that a 10 car consist would require two handbrakes (1 + 1 additional brake for the 10 cars).

Consequently, on March 5, 2020, the Claimant was notified he was found in violation of the foregoing rules and assessed a 15-day actual suspension from service. After the Organization's appeals were denied by the Carrier, the matter was submitted to this Board for resolution.

Initially, the Organization's procedural contentions cannot be sustained because it has failed to establish that the alleged violations prejudiced the Claimant in any way. Moreover, whereas here the Claimant admits to the material facts underlying the charges such due process concerns cannot succeed.

Turning to the merits, there is substantial evidence showing that the crew applied only one handbrake to the unattended cars, rather than the required two handbrakes. The Organization's claims that the rules are confusing and that the train was never left unattended cannot be sustained. As shown above, the examples given in the rules certainly clarify any alleged confusion the crew may have had over the handbrake rules. Furthermore, although the crew was on a track adjacent to the 10 cars set out on the mainline, the record shows that they were they were not in a position

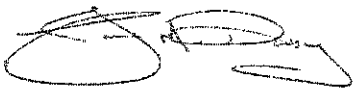
where they could take necessary action to stop the cars from moving should such have occurred.

Additionally, the level of discipline was not unreasonable under the facts of this case. The Claimant's actions herein constituted a Level 2 violation and the assessment of a 15-days actual suspension was consistent with the Carrier's Discipline Policy.

Accordingly, the claim is denied.

AWARD

Claim denied.



James M. Darby, Chairman

Marcus Ruef March 16, 2021
Marcus Ruef, Organization Member

John Ingoldsby, Carrier Member

CASE NO. 295
AWARD NO. 295

PUBLIC LAW BOARD 7154

PARTIES TO THE DISPUTE: **BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

And

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of CN/IC Engineer Loren Flowers for the unwarranted discipline of 60 days Actual Suspension from service (January 24, 2020 through March 23, 2020) assessed to Engineer Flowers. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of Violated Level and Rules - 1102 – Planned Work."

STATEMENT OF THE FACTS:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934.

This Public Law Board has jurisdiction over the dispute involved herein.

On February 12, 2020, the Carrier conducted an investigation in connection with Claimant's alleged entering Planned Work Limits without authority and/or contacting the Employee in Charge on the Leighton Subdivision on January 24, 2020, while assigned to Q19991-24.

Specifically, the evidence adduced at the investigation establish that on the day in question the Claimant was working as engineer on train Q19991-24. At approximately 0830 hours, the Claimant and Conductor Peter Cajigas were getting ready to pull out of Joliet Yard. Cajigas told the Claimant that he was in the clear and that the Claimant could pull ahead. Cajigas then got in a cab to get to the switch in anticipation of lining it back after the entire train went by it. The Claimant then started pulling out from the yard onto the mainline at approximately 0835 hours. Shortly thereafter, the Positive Train Control ("PTC") software on the engine alerted the Claimant that he was getting close to the planned work limits that were in effect at 0830 hours from MP 1.0 to MP 2.0 on the Leighton Subdivision. Due to the Claimant passing MP 1.0 without contacting the Employee in Charge of the limits and, thereby entering the limits without authority, the engine stopped and the Claimant alerted the RTC.

Consequently, on February 25, 2020, the Claimant was notified he was found in violation of (USOR) Rule 1102- *Planned Work* and assessed a 60-day actual suspension from service. After the Organization's appeals were denied by the Carrier, the matter was submitted to this Board for resolution.

Initially, the Organization's procedural contentions cannot be sustained because it has failed to establish that the alleged violations prejudiced the Claimant in any way. Moreover, whereas here the Claimant admits to the material facts underlying the charges such due process concerns cannot succeed.

Turning to the merits, there is substantial evidence to conclude that the Claimant's train entered the planned work limits without authority. While the Claimant admitted to the same at the investigation, the Organization raises a number of extenuating circumstances, none of which can be sustained under the facts of this case. Thus, the record shows that the handling of the red boards was fully compliant with Rule 1101 and the Claimant remained fully responsible for knowing his location in relation to the planned work, regardless of the red boards being set up, as required by Rule 1102. Also, the Organization's reference to the Claimant not seeing the mile post is incorrect, inasmuch as he admitted seeing the milepost as he passed it while speaking to the

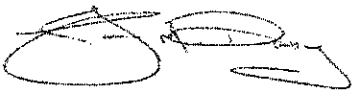
dispatcher. Finally, the PTC software is an added warning system, not technology that alleviates an employee's responsibility to adhere to the safety rules. In any event, the record shows that he was aware that PTC was malfunctioning that day, so he should never been relying on it as a means to comply with the safety rules.

Additionally, the level of discipline was not unreasonable under the facts of this case. The Claimant's actions herein constituted a Level 3 violation. He had previously been disciplined for a Level 2 violation, which, when considered with the instant violation, warranted the 60-day suspension assessed here.

Accordingly, the claim is denied.

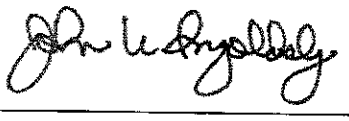
AWARD

Claim denied.



James M. Darby, Chairman

Marcus Ruef March 16, 2021
Marcus Ruef, Organization Member



John Ingoldsby, Carrier Member

CASE NO. 296
AWARD NO. 296

PUBLIC LAW BOARD 7154

PARTIES TO THE DISPUTE: **BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

And

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of CN/IC Engineer Travis Stewart [PIN 160222] for the unwarranted discipline of 30 days actual suspension from service (February 26, 2020 through March 26, 2020) assessed to Engineer Stewart. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of USOR 900 – Authority to enter CTC limits."

STATEMENT OF THE FACTS:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934.

This Public Law Board has jurisdiction over the dispute involved herein.

On March 17, 2020, the Carrier conducted an investigation in connection with allegations that the Claimant's train was occupying the mainline at MP 403.5, without authority, on February 26, 2020, while working as a crew member of L57371-26.

Specifically, the evidence adduced at the investigation established that on the day in question Claimant was working as engineer on train L57371-26 with Conductor Donavan Carey. At approximately 1113 hours the Claimant and Carey were in the clear of the mainline at Convent at approximately milepost MP 403.5. The Claimant called the dispatcher to seek authority to enter the mainline as a northbound train following train A419. The dispatcher repeated that Claimant's train was all in the clear at Convent and that they are looking at becoming a southbound train once A419 clears. The Claimant corrected the dispatcher with regard to their anticipated direction (northbound instead of southbound). The dispatcher then stated: ". . . okay, copy that, you want to go back north. RTC desk 6 is out." After a brief silence, the Claimant asked for the dispatcher's name for paperwork purposes; however, there was no response heard from the dispatcher. The Claimant and his conductor then proceeded onto the mainline (following A419).

Consequently, on April 1, 2020, the Claimant was notified he was found in violation of "USOR 900 – *Authority to Enter CTC Limits* and assessed a 30-day actual suspension from service. After the Organization's appeals were denied by the Carrier, the matter was submitted to this Board for resolution.

Initially, the Organization's procedural contentions cannot be sustained because it has failed to establish that alleged violations prejudiced the Claimant in any way. Moreover, whereas here the Claimant admits to the material facts underlying the charges such due process concerns cannot succeed.

Turning to the merits, there is substantial evidence to conclude that the Claimant's train never obtained authority to enter the mainline because he failed to properly comply with the cited safety violation.

Rule 900 states, in pertinent part:

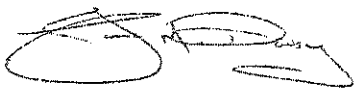
> "A train must not enter or occupy any track where CTC is in effect unless . . . the control operator authorizes the following . . . • a train to enter track between block signals as follows, "(Train) at (location) has authority to enter (track) and proceed (direction.)" After entering the track, the train is authorized to move only in the direction specified . . . ."

The Claimant and his conductor both testified that the dispatcher never told them they had "authority" to enter the mainline. Rather, they entered the mainline because they assumed "okay, copy that" was their permission and/or authority to do so. Rule 900 is very specific (using quotes) regarding the precise authorizing verbiage that must be used prior to entering or occupying a track. Under no uncertain terms, the Claimant failed to comply with this rule when he proceeded to enter the mainline without obtaining such express authority from the dispatcher. Additionally, the level of discipline was not unreasonable under the facts of this case. A violation of Rule 900 constitutes a Level 3 offense warranting a 30-day suspension.

Accordingly, the claim is denied.

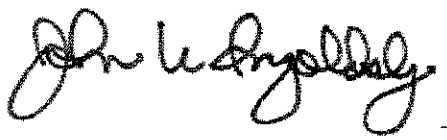
AWARD

Claim denied.



James M. Darby, Chairman

Marcus Ruef March 16, 2021
Marcus Ruef, Organization Member



John Ingoldsby, Carrier Member

CASE NO. 297
AWARD NO. 297

PUBLIC LAW BOARD 7154

PARTIES TO THE DISPUTE: **BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

And

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of CN/IC Engineer Gregory White [PIN 160222] for immediate reinstatement to service with seniority and vacation rights unimpaired, payment for all time lost, removal of all notations from his personal work record resulting from his dismissal from service on March 30, 2020. This claim shall include all wage equivalents to which he is entitled, Railroad Retirement credits restored, all out of pocket cost for Health and Welfare benefits or any loss of such benefits, and any other benefit he would have received working as an active Locomotive Engineer for the CN/IC Railroad for alleged violation of USOR Rule H-Furnishing Information and Conduct, and USOR 850-Where Stop Must be Made."

STATEMENT OF THE FACTS:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934.

This Public Law Board has jurisdiction over the dispute involved herein.

On March 16, 20209, the Carrier conducted an investigation into whether on February 22, 2020, on the Mc Comb Subdivision, the Claimant allegedly passed a

signal displaying stop indication while working as a crew member on assignment X30271-21.

Specifically, the evidence adduced at the investigation established that on the day in question Claimant was working as engineer on train X30271-21 with Conductor Jonathan Goforth. Shortly before 0800 hours Claimant received a diverging approach signal (proceed on diverging route at prescribed speed prepared to stop at next signal) at Summit which is approximately 4 miles away from the Kyzar absolute signal. At approximately 0759 hours, the Claimant was approaching a red signal at Kyzar, located at approximate milepost 805.8 on McComb Subdivision, when he failed to have control of his train while trying to stop. Claimant made an emergency stop application and still ended up passing the red signal. Without calling out "emergency, emergency, emergency" as required, Claimant then made an unauthorized reverse movement without contacting the dispatcher for permission to do so.

After the dispatcher contacted Claimant regarding the incident, Claimant told the dispatcher that he had squealing breaks and that he made the emergency application to see if it would clear up the stuck or possibly squealing brakes. At no time did Claimant inform the dispatcher that he passed a red signal and/or that he made a reverse movement on the mainline.

Consequently, on March 30, 2020, Claimant was dismissed from service with the Carrier for violating USOR Rule H-*Furnishing Information and Conduct*, and USOR 850-*Where Stop Must be Made*. After the Organization's appeals were denied by the Carrier, the matter was submitted to this Board for resolution.

Initially, the Organization's procedural contentions cannot be sustained because it has failed to establish that alleged violations prejudiced the Claimant in any way. Moreover, whereas here the Claimant admits to the material facts underlying the charges such due process concerns cannot succeed.

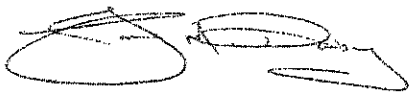
Turning to the merits, there is substantial evidence to conclude that the Claimant failed to properly comply with the cited safety violation. Indeed, the Claimant admits to passing the red stop signal. This is a serious operational violation. He then was less

than candid when he failed to report to the dispatcher that he reversed his movement on the mainline. The Organization's contentions that the Claimant was simply inexperienced and operating without Positive Train Control (PTC) is no excuse for his failure to observe the diverging approach signal and react appropriately. Moreover, the Board cannot find that the penalty imposed was excessive under the circumstances of this case. The discipline is consistent with the Carrier's Disciplinary Policy, inasmuch as he committed two Level 3 infractions within an extremely short period of time.

Accordingly, the claim is denied.

AWARD

Claim denied.



James M. Darby, Chairman

Marcus Ruef March 16, 2021
Marcus Ruef, Organization Member

John Ingoldsby, Carrier Member