



BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

GENERAL COMMITTEE OF ADJUSTMENT Canadian National - Wisconsin Central Ltd *Including former DM&IR, DWP and EJ&E Railways*

General Chairman's Report - August 2019

Dear Brothers and Sisters,

This is a condensed synopsis of the General Committee's activities for the month of August 2019.

CORRESPONDENCE

- With Local Chairmen, BLET National, and Labor Relations regarding various time claims, contract interpretations and discipline issues.
- With CN Labor Relations regarding Bessemer New York Dock claims, LMRC meeting, claims for arbitration, and excessive discipline.
- With BLET National Division concerning Bessemer New York Dock claims, CBA issues, discipline cases.
- With CN General Managers and Superintendents regarding discipline policy, Life Critical Incidents, Electronic Ops Manual and excessive discipline.
- Discuss issues of mutual concern with CN-GTW GC Karakian, CN-IC GC Evans, IHB GC Burns and CP GC Semenek.
- Also received 123 phone calls in the month August 2019 discussing various issues with Labor Relations, Timekeeping, Managers, Local Chairmen and Members.

Handled various issues regarding, but not limited to:

- General Office Duties: Telephone and Correspondence Communications
- Contract issues
- GTS claims
- First Division Cases
- Discipline appeals
- Discipline issues
- Investigation assistance

- National Health & Welfare Plan assistance
- The Hartford, Lincoln Financial, Principal and AFLAC Insurance
- Retirement assistance
- Legislative – Wisconsin
- FMLA Assistance
- Mediation/Arbitration (ADR)
- BLET Auxiliary
- GCA Website – ongoing maintenance
- LMRC meeting
- FELA
- Prior right assignments
- Bessemer New York Dock claims
- Shortage of regular assignments
- Voluntary furloughs
- PLD allocations
- Member transferring to GTW
- Calling procedures
- Seniority placement
- Changes to risk behaviors testing
- Moving start times for call windows
- Critical incidents
- Mobilization
- Harassment by manager
- Transfer of Division membership
- E-Testing with drones
- Template claim books
- Safety Summit meetings
- Peer to Peer
- Electronic Ops Manual
- Vacation pay outs
- National Handling

DISCIPLINE:

In August 2019, this office received three (3) new discipline case from the Local Chairman for the following Division:

- Division 163 – 3

In August 2019, this office submitted one (1) discipline appeals to Labor Relations for the following Division:

- Division 174 – 1

In August 2019, this office scheduled two (2) discipline appeals for conference to Labor Relations for the following Division:

- Division 173 – 2

ARBITRATION:

The following Dockets requested for hearings before the Division with the Referee present were held at the headquarters of the First Division of the National Railroad Adjustment Board, Thursday, April 25, 2019 for the purpose of considering evidence that has been submitted, hearing argument, and rendering an award for the following cases. The following decisions was rendered for the following cases, in addition, following the decisions is a condensed synopsis of the Referee's decisions:

Award No. 29777 - Docket No. 49791 – fifteen (15) days suspension – Claim sustained in accordance with the findings

USOR - General Rule H - Furnishing Information and Conduct, USOR - General Rule I - Duty Reporting or Absence , and USOR - Rule 0100 - Rules, Regulations and Instructions.

The Board has carefully reviewed the record and finds no material procedural error. The Board finds that there is insufficient evidence to support the violation of USOR -General Rule H-Furnishing Information and Conduct. The Board finds that the Carrier has established by substantial evidence a violation of General I -Duty Reporting or Absence and Rule 100-Rules, Regulations and Instructions. The evidence established that the Claimant was without sleep for 25 hours. This is three times more than the normal eight-hours. Certainly, within this 25 hours, the Claimant realized that his condition was flaring-up. The Board finds that the Claimant failed to meet his reporting responsibilities in violation of the Rule.

Boards generally agree that where misconduct has been established, the decision as to the proper penalty is a matter that lies within the discretion of Carrier and ordinarily should not be disturbed. However, some limited arbitral review of the penalty is not only proper but also necessary in order to assure adherence to a fundamental precept of just cause, which is reasonableness in consideration of the proven offense. The Carrier

assessed a ten day actual suspension for three charges and has only proven two. The unproven charge, General Rule H has a dishonesty component, and may go to the core of trust in employer-employee relations, especially when dealing with FMLA, resulting in a higher penalty. The Board also notes that one of the two proven charges is also a General Rule, Rule 100. After a review of the Claimant's record and employment with the Carrier, and in consideration of the proven offense, the Board finds that the penalty is unreasonably harsh. The penalty is reduced to a five-day actual suspension.

AWARD

Claim sustained in accordance with the Findings

Award No. 29774 - Docket No. 49788 – sixty (60) days actual suspension – Claim sustained

USOR - General Rule I - Duty Reporting or Absence, USOR - Rule 0100 - Rules, Regulations and Instructions and USOR - General Rule B - Reporting and Complying with Instructions.

The Board has carefully reviewed the transcript, on-property correspondence and submissions. This Board finds that the Claimant suffered the onset of a medical condition that affected his ability to protect his service for the period March 11 to September 12, 2016. The Claimant initially requested FMLA leave benefits for March 11 through September 12, 2016. As part of the FMLA certification process, a physician verification of qualifying condition is necessary. The Claimant completed all necessary documentation, and his medical verification stated that he was unable to work on March 11, 2016. According to the Claimant's doctor, the March 11 absence should have been covered; the Claimant established an affirmative defense. The Carrier's decision to approve the FMLA leave benefits request only from March 12, 2016 without explanation in the disciplinary proceedings is both arbitrary and unreasonable in light of the medical verification.

The Board finds that while the Carrier established noncompliance with USOR-GENERAL Rule 1- Duty of Reporting or Absence, USOR-Rule 0100-Rules, Regulations and Instruction and USOR – General Rule B– Reporting and Complying with Instructions, it has failed to establish just cause to discipline under the mitigating circumstances of this case.

AWARD

Claim sustained.

Award No. 29775 - Docket No. 49789 – dismissal – Claim denied

USOR - General Rule A - Safety, USOR - General Rule H - Furnishing Information and Conduct, USOR - Rule 0100 - Rules, Regulations and Instructions, ABTH - Rule 300 - Train Handling General Procedures and ABTH - Rule 306 - Automatic Brake

After careful review of the transcript, on-property correspondence and submissions, the Board finds no material procedure error in the handling of this claim. The Board reminds the Organization that the Claimant lied about why he placed the train in emergency. Lying is an act that deprived the Carrier information to which it was entitled in order to evaluate how to best continue operations. The Boards finds that substantial evidence was introduced at the Investigation hearing to establish a violation of USOR-GENERAL Rule A- Safety, USOR-General Rule H-Furnishing Information and Conduct, USOR- Rule 0100-Rules, Regulations and Instructions, ABTH-Rule 300-Train Handling General Procedures, ABTH-Rule 306-Automatic Brake. The issue is whether the penalty assessed is commensurate with offense in consideration of the Claimant's employment with this Carrier. After review of the Claimant's record, the Board finds no reason to disturb the penalty.

AWARD

Claim denied.

Award No. 29776 - Docket No. 49790 – twenty (20) days actual suspension – Claim sustained

ABTH - Rule 502 - Securing Unattended Trains or Equipment Attached to a Source of Air, LIFE U. S. Safety Rules - T-2 Coupling and Uncoupling, USOR - Rule 0401 - Hand Signals, USOR - Rule 0404 - Radio and Voice Communication, USOR - Rule 0502 - Shoving Movements, US Peer to Peer - Item 1 - Job Briefings, US Peer to Peer - Item 4 - Going In-Between Equipment, US Peer to Peer - Item 12 - Number of Handbrakes Applied.

The Board has reviewed the record developed by the parties during their handling of the claim on the property and submissions. The Board finds that the Claimant received a fair Investigation with due notice of charges, opportunity to defend, and representation. The Carrier did not establish by substantial evidence that Claimant was culpable of the charged misconduct or dereliction of duty. The Trainmaster was monitoring the crew's activity as his responsibility occurred related to the handbrakes, but an almost violation is not a violation. No one went between the rail and following a face to face job briefing, hand signals were utilized in accordance with the Rules and regulations. Due to the failure of proof, the penalty is set aside.

AWARD

Claim sustained.

Award No. 29780 - Docket No. 49795 – dismissal – Claim denied

USOR - Rule 0300 - Rule Books & Timetables, USOR - Rule 0303 - Operating Bulletins and Bulletin Notices and USOR - Rule 0304 - Modifying Instructions

The Board has carefully reviewed the record and finds no material procedural error in this case. The Board finds that the Claimant violated USOR- Rule 0300 - Rule Books & Timetables, USOR -Rule 0303 - Operating Bulletin Notices and USOR -Rule 0304-Modifying Instructions. The remaining issue is whether or not the penalty imposed arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case. The Organization points out that violation of these rules is not a standalone offense. A review of the Claimant's record indicates that the Claimant was disciplined on November 6, 2015 for violation of USOR Rule 300, and was assessed a 15 days actual suspension. His record at that time included a ten days deferred suspension assessed on September 23, 2015 and a letter of reprimand issued on January 12, 2015. Since the actual suspension of September 23, 2015, the Claimant incurred three other disciplines, a 30-day deferred suspension on 10/6/2015 for T-12 Personal Protective Clothing, a 45-day deferred suspension for ABTH-Rule 300 Train Handling, and a 60-day deferred suspension on January 31, 2016 for ABTH-Rule 502-Securing Unattended Trains.

For this incident, the Carrier dismissed the Claimant. Arbitral principles are well-settled that the Board cannot simply substitute its judgment for that of the Carrier. The Organization must establish that the penalty imposed is arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case. After a review of the Claimant's record and tenure with the Carrier, the Board finds no reason to disturb the Carrier's decision.

AWARD

Claim denied.

Award No. 29778 - Docket No. 49793 - dismissal – Claim denied

USOR - General Rule B - Reporting and Complying with Instructions, USOR - General Rule H - Furnishing Information and Conduct, USOR - General Rule I- Duty Reporting or Absence.

The Board finds that the Carrier has met its burden of proof for the rule violations as of November 28, 2016. The Board also finds that the penalty is commensurate with the offense.

AWARD

Claim denied.

**Award No. 29779 - Docket No. 49794 – twenty (20) days deferred for one (1) year
– Claim sustained**

Attendance Guidelines for Unionized Employees, effective May 24, 2013, USOR - General Rule I- Duty Reporting or Absence and System Bulletin Notice No. 4, dated January 1, 2016.

The Board has carefully reviewed the record and finds no procedural errors. The Company's attendance policy sets forth its expectation for regular attendance and provides notification to the employee when discipline may result due to excessive absenteeism. It is not disputed that the November 7, 2019 absence triggered the formal letter of charge. The Claimant failed to avail himself of the proper procedure for layoff without explanation of why he called one department and not another. The Claimant gave a lengthy explanation of his FMLA difficulties, and based upon thereon, this Board concludes that the Claimant knew or should have known that he needed local approval for the absence. The Claimant acknowledged that he did not seek local management approval for the layoff. However, had the Claimant sought such approval, the Carrier had no justifiable reason to deny approval of the absence given the known medical circumstances of this Claimant. The Carrier's attendance policy states that "an employee will be subject to Corrective action (which may include discipline)." The Board finds that there was no just cause to discipline, and the Carrier should have utilized other corrective action.

AWARD

Claim sustained.

The following Dockets requested for hearings before the Division with the Referee present were held at the headquarters of the First Division of the National Railroad Adjustment Board, Friday, April 26, 2019 for the purpose of considering evidence that has been submitted, hearing argument, and rendering an award for the following cases. The following decisions was rendered for the following cases, in addition, following the decisions is a condensed synopsis of the Referee's decisions:

Award No. 29781 - Docket No. 49796 – ten (10) days actual suspension – Claim sustained in accordance with the findings

LIFE U. S. Safety Rules - T-12 Personal Protective Equipment (PPE) and Clothing and LIFE U. S. Safety Rules - T-13 - Personal Protective Equipment (PPE) Chart.

The Carrier assessed a penalty of ten days actual suspension. The Organization argues that the penalty is punitive due to the Claimant declining the waiver. Offers of settlement are made for a sundry of reasons; the Board can only surmise that the Claimant made an informed decision when he rejected the waiver. Notwithstanding, the question is whether the penalty is appropriate given the seriousness of the proven offense and that it is not arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case. The Board finds that the penalty is unreasonably harsh in consideration of the nature of the offense and the Claimant's record. The Claimant had approximately two and half a year of services, and one prior incident of discipline that occurred on April 16, 2015. At that time, the Claimant signed a waiver of Investigation and was assessed a letter of reprimand for four operational infractions. The present incident does not constitute a serious aggression to skip the steps in progressive discipline. A reduction in penalty is warranted. The Board modifies the penalty to a five day actual suspension.

AWARD

Claim sustained in accordance with the Findings.

Award No. 29782 - Docket No. 49797 – fifteen (15) days actual suspension from service – Claim denied

USOR - Rule 0710 - Switches Run Through

The Claimant's record is a valid consideration in the assessment of discipline. After a review of his record, the Board is not persuaded that the Carrier's discipline is as punitive or disproportionate as the Organization opines. In consideration of the facts and circumstances, the Board finds that the penalty assessed is commensurate with the offense in consideration of the Claimant's years of service.

AWARD

Claim denied.

Award No. 29783 - Docket No. 49799 – five (5) days actual suspension from service – Claim sustained

ABTH - Rule 411 - Unattended Locomotives and ABTH - Rule 502 - Securing Unattended Trains or Equipment

The Board has carefully reviewed the record and finds no material procedural error. The Board finds that the Rule in question is subject to more than one reasonable interpretation, and the Claimant's interpretation as being one, the Carrier failed to meet its burden of proof.

AWARD

Claim sustained.

Award No. 29784 - Docket No. 49800 – 60 Days Actual Suspension from Service – Claim denied

U.S. Operating Rules - A: Safety, U.S. Operating Rules - 100: Rules, Regulations, and Instructions, and System Special Instructions - Item 3: Defect Detectors.

The Board has carefully reviewed the record and finds no material procedural error. The Board finds that substantial evidence exists of record to support the Rule violations. It is well settled that admissions as to the elements of charge satisfies the Carrier's burden of proof. The Claimant should have been aware of his responsibilities under the Rules, and compliance with the same would have avoided the seriousness of the incident. The Board further finds that the penalty is commensurate with the offense in consideration of the facts of this case and the Claimant's record. The Board finds that the RTC's misinformation does not constitute mitigation for the Rules governing his actions.

AWARD

Claim denied.

Award No. 29785 - Docket No. 49801 – dismissal – Claim denied

ABTH 300 - Train Handling General Procedures, ABTH 306 - Automatic Brake, ABTH 312 - Running Release, ABTH 323 - Slowing or Controlling Speed (E. - Stretch Braking), ABTH 302 - Throttle (Reducing Throttle Positions) and Midwest Timetable #1 - Special Conditions (Steelton Hill Instructions).

The evidence of record establishes that the Carrier has met its burden of proof. The Board therefore finds that the Claimant violated ABTH 300-Train Handling General Procedures,

ABTH 306- Automatic Brake, ABTH 312 -Running Release, ABTH 323 - Slowing or Controlling Speed (E.-Stretch Braking), ABTH 302- Throttle (Reducing Throttle Positions) and Midwest Timetable #1 - Special Conditions (Steelton Hill Instructions). Further, the Board finds that the penalty of dismissal is not arbitrary, capricious, discriminatory, or unreasonably harsh inconsideration of the facts and circumstances of the case and the Claimant's record.

AWARD

Claim denied.

Award No. 29789 - Docket No. 49805 – dismissal – Claim denied

U.S. Operating Rules H - Furnishing Information and Conduct, U.S. Operating Rules W - Peer to Peer and Job Briefings, U.S. Operating Rules 1000 - Mandatory Directives
U.S. Operating Rules 1004 - Joint Mandatory Directives

The Board finds that there is sufficient evidence to support the violation of the USOR - General Rule H-Furnishing Information and Conduct, USOR Rule W - Peer to Peer and Job Briefings, USOR Rules 1000-Mandatory Directives, USOR Rules 1004- Joint Mandatory Directives. The Board further finds that the penalty is commensurate with offense and the Claimant's employment history.

AWARD

Claim denied.

Award No. 29786 - Docket No. 49802 – dismissal – Claim denied

U.S. Operating Rules - T: Sleeping

The Board finds that the formal charge letter contains sufficient information to apprise the Claimant of the nature of the offense giving rise to charge to prepare a defense.

The Board further finds sufficient evidence presented to the Carrier to justify his removal from service. An engineer asleep while operating a train is a safety risk.

The Board finds that substantial evidence was produced to meet the Carrier's burden of proof. The Claimant violated U.S. Operating Rules – T: Sleeping. The Board further finds that the penalty is commensurate with the offense in consideration of the facts of this case and the Claimant's record.

AWARD

Claim denied.

Award No. 29788 - Docket No. 49804 – dismissal – Claim denied

Air Brake and Train Handling Rules - 300 Train Handling General Procedures

The Board finds that substantial evidence was introduced at the Investigation to establish a violation of Air Brake and Train Handling Rules-300 Train Handling General Procedures. The issue is whether the penalty assessed is commensurate with offense in consideration of the Claimant's employment with this Carrier. After review of the Claimant's record, the Board finds no reason to disturb the penalty.

AWARD

Claim denied.

Award No. 29787 - Docket No. 49803 – dismissal – Claim denied

USOR - Rule 0816 - Stop, USOR - Rule 0812 - Diverging Approach, USOR - Rule 0850 - Where Stop Must Be Made, and USOR - Rule 0104 - Duties of Train and Engine Crew Members.

The Board has carefully reviewed the record and finds no material procedural error in this case. The Board finds that the Claimant violated USOR- Rule 0816 -Stop, USOR-Rule 812- Diverging Approach, USOR -Rule 0850- Where Stop Must be Made and USOR -Rule 104-Duties of Train and Engine Crew Members. The remaining issue is whether or not the penalty imposed is arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case. Engineers should be aware of all signals on their territory. All irregularities should be covered in safety briefing prior to beginning a day's work. The Board finds the rareness of the signal is a factor to consider in mitigation just as the Claimant's work record. In light of the Claimant's work record, the Board cannot substitute its judgment for that of the Carrier.

AWARD

Claim denied.

**REMEMBER THAT IN CONTRACT ISSUES THE
BURDEN OF PROOF LIES WITH YOU**

TIME CLAIMS:

In August 2019, this office received thirteen (13) new time claims from the Local Chairmen of the following Divisions:

- Division 174 – 2
- Division 188 – 9
- Division 209 – 2

In August 2019, this office appealed thirteen (13) Step 3 time claims to Labor Relations for the following Divisions:

- Division 163 – 3
- Division 174 – 3
- Division 188 – 6
- Division 209 – 1

In August 2019, this office scheduled eleven (11) time claim to conference at next LMRC for the following Division:

- Division 174 – 2
- Division 185 – 2
- Division 188 – 7

MEETINGS – OUT OF TOWN MEETINGS

None		
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MEETINGS - IN TOWN MEETINGS

8/11/2019	<ul style="list-style-type: none">• Attend Division 209 meeting.
8/21/2019	<ul style="list-style-type: none">• Attend At Risk Behavior with the Carrier and Officers of BLET and Smart-TD in Green Bay.

The GCA had a conference call on August 1, 2019 to discuss various issues.

Fraternally yours,

John Reynolds

John Reynolds
General Chairman, CN-WC BLET