

BEFORE
PUBLIC LAW BOARD NO. 7362
CASE NO.100

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND)	
TRAINMEN (Western Lines))	PARTIES TO THE
vs.)	DISPUTE
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

“Claim on behalf of Conductor J.W. Smith (209595) requesting compensation for all time lost during the thirty (30) day actual suspension, compensation for time lost attending the investigation, with Claimant to be made whole for all benefits and contractual entitlements such as vacation, performance awards and bonuses, and that all mention of this matter shall be expunged from the Claimant’s record.”

FINDINGS:

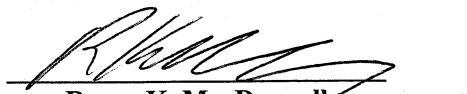
The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated November 19, 2009, (as amended) that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings. As specified in the PLB Agreement establishing this Board, this Award shall be limited to one page and shall not establish precedent nor be referred to by the Parties in the future.

After a thorough review of the record, the Board concludes that the Claimant was charged with failing to get 3 step protection, on March 28, 2011, before crossing within 25 feet of a locomotive. After an agreed-upon postponement, an investigation was held on April 27, 2011. The Claimant was assessed a 30 day actual suspension on May 25, 2011, for violation of Safety Rule GS-10.

The Carrier witness says that he observed the Claimant step within 8-10 feet of a locomotive without 3 step protection. The Organization points out that the Claimant said he was ½ car length away from the locomotive (some 25 feet or more) and that the Carrier witness was 450 feet away on the other side of a 4 lane highway, with cars going by and other cars parked in between him and the Claimant. They further question the Carrier witness’ ability to judge distance since he judged himself to be some 70-75 yards (210-225 feet) away from the claimant, when the Organization’s evidence presented in the hearing proved that he was 450 feet away. There was no video download from the locomotive presented to assist in determining distance. There is no evidence that the Carrier measured any of the distances that day. The Carrier says that credibility is a matter left to the Hearing Officer. This Board agrees. However, this is not a matter of credibility. It is a matter of conflicting evidence. It is clear that both parties honestly disagree over the 15 feet in question. In this case the Carrier has the burden of proof. It could have done a number of things to provide more concrete evidence to this Board. It did not. Therefore, this Board finds that the Carrier has failed to meet the required burden of proof.

AWARD

The Claim is sustained.


Roger K. MacDougall
Chair and Neutral Member

Dated: 6/19/2012

At: Chicago, IL