

**BEFORE
PUBLIC LAW BOARD NO. 7362
CASE NO.104**

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

"Claim on behalf of Engineer W.E. Edele (233771) 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.

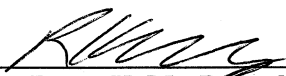
After a thorough review of the record, the Board concludes that the Claimant was charged, on August 24, 2011, with failing to line a switch back to a normal position, on August 18, 2011. After an agreed-upon postponement, the investigation was held on September 15, 2011. The Claimant was assessed a 30 day actual suspension on October 11, 2011, for violation of Operating Rule 104-D.

The Organization says that the Claimant was charged with violating Rule 104-B but disciplined for violating 104-D and thus claim a preliminary objection going to lack of fairness and impartiality. The Board finds that this is not the case. The charge letter specifies that the Claimant was charged with failing to line a switch back to a normal position. No Rule is quoted in the charge letter. The Claimant and his representative knew the case to be met. The discussion during the investigation centered on Rule 104, and in most cases 104-B specifically. This Board had the benefit of having all of Rule 104 before it. It does seem, to this Board, as the Carrier admits, that the discipline letter had a typographical error specifying a violation of Rule 104-D. This Board has reviewed the investigation in total and the Rules in total and finds, for the reasons below, that in this circumstance the issue is whether the Claimant failed to line the switch properly, as charged.

The Organization also claims that the definition of the tracks in question leave some doubt as to the Rule interpretations. This has much appeal, since even the Carrier Road Foreman of Engines questioned this interpretation. However, this is overcome by the Claimant's own testimony where he says that he had always lined the switch properly, as per the Carrier definition. This leaves the dispute as to how he actually left the switch. He says it was properly lined. Some 30 minutes later the Carrier officers found the switch lined and locked the opposite way. The record shows that this was the only crew in the vicinity. The Organization says that maybe someone else came along in the meantime and lined and locked the switch the opposite direction. In these circumstances, the Board is not persuaded by this argument. The Carrier has met it's burden of proof and, given the record before it, there is no reason to interfere with the discipline as assessed.

AWARD

The Claim is denied.



Roger K. MacDougall
Chair and Neutral Member

Dated: 6/19/2012

At: Chicago, IL